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No. 45] NEW DELHI, NOVEMBER 4—NOVEMBER 10, 2007, SATURDAY/KARTIKA 13—KARTIKA 19, 1929

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक् संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (II)
PART II—Section 3—Sub-section (II)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(राजस्व विभाग)

केन्द्रीय उत्पाद शुल्क और सीमा शुल्क, आयुक्त का कार्यालय

हैदराबाद, 17 जुलाई, 2007

अधिसूचना सं. 2/2007—सीमा शुल्क

का.आ. 3247.—भारत सरकार, राजस्व विभाग, वित्त मंत्रालय, नई दिल्ली की अधिसूचना सं. 33/94—सीमा शुल्क (गै.टै.), दिनांक 1-7-94 के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैं, डा. एस.एल.मीणा, आयुक्त, केन्द्रीय उत्पाद शुल्क और सीमा शुल्क, हैदराबाद—III आयुक्तालय, एतद्वारा आंध्र प्रदेश राज्य में रंगा रेड्डी जिला के सरूर नगर मंडल के नादरगुल गाँव को, सीमा शुल्क अधिनियम, 1962 (1962 का 52) की धारा 9 के अधीन निजी बंधक भाण्डागार को लाइसेंस देने के प्रयोजनार्थ, भाण्डागार केन्द्र (निर्यातानुमुख इकाई) घोषित करता हूँ।

[फाइल प.सं. VIII/16/24/2007—सीमा]

डॉ. एस. एल. मीणा, आयुक्त

MINISTRY OF FINANCE
(Department of Revenue)

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE & CUSTOMS

Hyderabad, the 17th July, 2007

Notification No. 2/2007—CUSTOMS (N.T.)

S.O. 3247.—In exercise of the powers conferred by Notification No. 33/94 Customs (N.T.), dated 1-7-94 of Government of India, Ministry of Finance, Department of Revenue, New Delhi, I, Dr. S.L. Meena, Commissioner of Customs & Central Excise, Hyderabad-III Commissionerate do hereby declare NADARGUL Village of Saroornagar Mandal of Rangareddy District in the State of Andhra Pradesh, to be a warehousing station under Section 9 of Customs Act, 1962 (52 of 1962) for the purpose of licensing of Private Bonded Warehousing (Export Oriented Unit).

[File C. No. VIII/16/24/2007—Cus]

Dr. S. L. MEENA, Commissioner

सीमा शुल्क मुख्य आयुक्त का कार्यालय (निवारक)

चेन्नै, 5 नवम्बर, 2007

अधिसूचना सं. 1/2007-के. उ. शु. (गै.टै)

का.आ. 3248.—भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, नई दिल्ली की अधिसूचना सं. 33/94-सीमा शुल्क (गै.टै), दिनांक 1-7-1994 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैं, जयेन्द्रनाथ, मुख्य आयुक्त, सीमा शुल्क (निवारक), चेन्नै, तमिलनाडु राज्य के पुदुक्कोट्टै जिला विरालिमलै, भूतकुडि गाँव, मेलपच्चकुडि को सीमा शुल्क अधिनियम, 1962 (1962 का 52) की धारा 9 के अधीन एतद्द्वारा भंडागारण स्थान घोषित करता हूँ।

[सं. VIII/2/1/2007-मुआ (निवा.)]

जयेन्द्रनाथ, मुख्य आयुक्त

OFFICE OF THE CHIEF COMMISSIONER OF CUSTOMS (PREVENTIVE)

Chennai, the 5th November, 2007

Notification No. 1/2007—CUS (N. T.)

S.O. 3248.—In exercise of the powers conferred by Notification No. 33/94 Cust (N.T), dated 1-7-1994 of the Government of India, Ministry of Finance, Department of Revenue, New Delhi, I, Jayendranath, Chief Commissioner of Customs (Preventive), Chennai hereby declare Melapatchakudi, Boothakudi Village, Viralimalai, Pudukottai District to be a warehousing station under Section 9 of Customs Act, 1962 (No. 52 of 1962).

[No. VIII/2/1/2007-CC(Prev.)]

JAYENDRANATH, Chief Commissioner

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 7 नवम्बर, 2007

का.आ. 3249.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खण्ड 3 के उप-खण्ड (1) और खण्ड 8 के उप-खण्ड (1) के साथ पठित बैंकारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधारा 3 के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, भारतीय रिजर्व बैंक के परामर्श से, पंजाब नेशनल बैंक के महाप्रबंधक श्री बी. एम. मित्तल (जन्म तिथि 17-10-1949) को उनके पदभार ग्रहण करने की तारीख से और अगले आदेश होने तक या उनकी अधिवर्षिता की आयु, अर्थात् 31 अक्टूबर, 2009 तक, जो भी पहले हो, 22050-500-24050 रुपये के वेतनमान में यूको बैंक के पूर्णकालिक निदेशक (कार्यपालक निदेशक के रूप में पदनामित) के रूप में नियुक्त करती है।

[सं. 9/21/2006-बीओ-1]

जी. बी. सिंह, उप सचिव

(Department of Financial Services)

New Delhi, the 7th November, 2007

S.O. 3249.—In exercise of the powers conferred by clause (a) of sub-section (3) of section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980, read with sub-clause (1) of clause 3, sub-clause (1) of clause 8 of the Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India hereby appoints Shri B.M. Mittal, (DoB : 17-10-1949) General Manager, Punjab National Bank, as a whole time director (designated as Executive Director) UCO Bank in the pay scale of Rs. 22050-500-24050 from the date of his taking over charge of the post and until further orders or till the date of his superannuation i.e. up to 31st October, 2009, whichever is earlier.

[F. No. 9/21/2006-BO-1]

G. B. SINGH, Dy. Secy.

नई दिल्ली, 7 नवम्बर, 2007

का.आ. 3250.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खण्ड 3 के उप-खण्ड (1) और खण्ड 8 के उप-खण्ड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधारा 3 के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, भारतीय रिजर्व बैंक के परामर्श से, बैंक आफ बड़ोदा के महाप्रबंधक श्री के.के. अग्रवाल (जन्म तिथि 2-7-1949) को उनके पदभार ग्रहण करने की तारीख से और अगले आदेश होने तक या उनकी अधिवर्षिता की आयु, अर्थात् 31 जुलाई, 2009 तक, जो भी पहले हो, 22050-500-24050 रुपए के वेतनमान में इलाहाबाद बैंक के पूर्णकालिक निदेशक (कार्यपालक निदेशक के रूप में पदनामित) के रूप में नियुक्त करती है।

[फा. सं. 9/21/2006-बीओ-1]

जी. बी. सिंह, उप सचिव

New Delhi, the 7th November, 2007

S.O. 3250.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980, read with sub-clause (1) of clause 3, sub-clause (1) of clause 8 of the Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India hereby appoints Shri K.K. Agarwal, (DoB : 02-07-1949) General Manager, Bank of Baroda, as a whole time Director (designated as Executive Director) Allahabad Bank in the pay scale of Rs. 22050-500-24050 from the date of his taking over charge of the post and until further orders or till the date of his superannuation i.e. up to 31st July, 2009, whichever is earlier.

[F.No. 9/21/2006-BO-I]

G. B. SINGH, Dy. Secy.

नई दिल्ली, 7 नवम्बर, 2007

का.आ. 3251.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खण्ड 3 के उप-खण्ड (1) और खण्ड 8 के उप-खण्ड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधारा 3 के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, भारतीय रिजर्व बैंक के परामर्श से, यूनियन बैंक ऑफ इंडिया के महाप्रबंधक श्री भास्कर सेन (जन्म तिथि 09-12-1952) को उनके पदभार ग्रहण करने की तारीख से 5 वर्ष की अवधि के लिए और अगला आदेश होने तक, जो भी पहले हो, 22050-500-24050 रुपए के वेतनमान में देना बैंक के पूर्णकालिक निदेशक (कार्यपालक निदेशक के रूप में पदनामित) के रूप में नियुक्त करती है।

[फा. सं. 9/21/2006-बी.ओ. 1]

जी. बी. सिंह, उप सचिव

New Delhi, the 7th November, 2007

S.O. 3251.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980, read with sub-clause (1) of clause 3, sub-clause (1) of clause 8 of the Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India hereby appoints Shri Bhasker Sen, (DoB : 09-12-1952) General Manager, Union Bank of India, as a whole time Director (designated as Executive Director) Dena Bank in the pay scale of Rs. 22050-500-24050 for a period of five years from the date of his taking over charge of the post and until further orders, whichever is earlier.

[F.No. 9/21/2006-BO-I]

G. B. SINGH, Dy. Secy.

नई दिल्ली, 7 नवम्बर, 2007

का.आ. 3252.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खण्ड 3 के उप-खण्ड (1) और खण्ड 8 के उप-खण्ड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधारा 3 के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, भारतीय रिजर्व बैंक के परामर्श से, ओरियंटल बैंक ऑफ कामर्स के महाप्रबंधक श्री जे.पी. दुआ (जन्म तिथि 05-08-1952) को उनके पदभार ग्रहण करने की तारीख से 5 वर्ष की अवधि के लिए और अगला आदेश होने तक, जो भी पहले हो, 22050-500-24050 रुपए के वेतनमान में इलाहाबाद बैंक के पूर्णकालिक निदेशक (कार्यपालक निदेशक के रूप में पदनामित) के रूप में नियुक्त करती है।

[फा. सं. 9/21/2006-बीओ-1]

जी. बी. सिंह, उप सचिव

New Delhi, the 7th November, 2007

S.O. 3252.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980, read with sub-clause (1) of clause 3, sub-clause (1) of clause 8 of the Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India hereby appoints Shri J.P. Dua (DoB : 05-08-1952) General Manager, Oriental Bank of Commerce, as a whole time Director (designated as Executive Director) Allahabad Bank in the pay scale of Rs. 22050-500-24050 for a period of five years from the date of his taking over charge of the post and until further orders, whichever is earlier.

[F. No. 9/21/2006-BO-I]

G. B. SINGH, Dy. Secy.

नई दिल्ली, 7 नवम्बर, 2007

का.आ. 3253.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खण्ड 3 के उप-खण्ड (1) और खण्ड 8 के उप-खण्ड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधारा 3 के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, भारतीय रिजर्व बैंक के परामर्श से, ओरियंटल बैंक ऑफ कामर्स के महाप्रबंधक श्री तजेन्द्र मोहन भसीन (जन्म तिथि 23-05-1956) को उनके पदभार ग्रहण करने की तारीख से 5 वर्ष की अवधि के लिए और अगला आदेश होने तक, जो भी पहले हो, 22050-500-24050 रुपए के वेतनमान में यूनाइटेड बैंक आफ इंडिया के पूर्णकालिक निदेशक (कार्यपालक निदेशक के रूप में पदनामित) के रूप में नियुक्त करती है।

[फा. सं. 9/21/2006-बीओ-1]

जी. बी. सिंह, उप सचिव

New Delhi, the 7th November, 2007

S.O. 3253.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980, read with sub-clause (1) of clause 3, sub-clause (1) of clause 8 of the Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India hereby appoints Shri Tajendra Mohan Bhasin (DoB : 23-05-1956) General Manager, Oriental Bank of Commerce, as a whole time Director (designated as Executive Director) United Bank of India in the pay scale of Rs. 22050-500-24050 for a period of five years from the date of his taking over charge of the post and until further orders, whichever is earlier.

[F. No. 9/21/2006-BO-I]

G. B. SINGH, Dy. Secy.

नई दिल्ली, 7 नवम्बर, 2007

का.आ. 3254.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खण्ड 3 के उप-खण्ड (1) और खण्ड 8 के उप-खण्ड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधारा 3 के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, भारतीय रिजर्व बैंक के परामर्श से, बैंक ऑफ इंडिया के महाप्रबंधक श्री जी. नारायणन (जन्म तिथि 31-10-1949) को उनके पदभार ग्रहण करने की तारीख से और अगले आदेश होने तक या उनकी अधिवर्षिता की आयु, अर्थात् 31 अक्टूबर, 2009 तक, जो भी पहले हो, 22050-500-24050 रुपए के वेतनमान में इंडियन ओवरसीज बैंक के पूर्णकालिक निदेशक (कार्यपालक निदेशक के रूप में पदनामित) के रूप में नियुक्त करती है।

[फा. सं. 9/21/2006-बीओ-1]

जी. बी. सिंह, उप सचिव

New Delhi, the 7th November, 2007

S.O. 3254.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980, read with sub-clause (1) of clause 3, sub-clause (1) of clause 8 of the Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India hereby appoints Shri G. Narayanan, (DoB : 31-10-1949) General Manager, Bank of India, as a whole time Director (designated as Executive Director) Indian Overseas Bank in the pay scale of Rs. 22050-500-24050 from the date of his taking over charge of the post and until further orders or till the date of his superannuation i.e. up to 31st October, 2009, whichever is earlier.

[F. No. 9/21/2006-BO-I]

G. B. SINGH, Dy. Secy.

नई दिल्ली, 7 नवम्बर, 2007

का.आ. 3255.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खण्ड 3 के उप-खण्ड (1) और खण्ड 8 के उप खण्ड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधारा 3 के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, भारतीय रिजर्व बैंक के परामर्श से, पंजाब एंड सिंध बैंक के महाप्रबंधक श्री जी. एस. वेदी (जन्म तिथि 28-06-1950) को उनके पदभार ग्रहण करने की तारीख से और अगले आदेश होने तक या उनकी अधिवर्षिता की आयु, अर्थात् 30 जून, 2010 तक, जो भी पहले हो, 22050-500-24050 रूपए के वेतनमान में केनरा बैंक के पूर्णकालिक निदेशक (कार्यपालक निदेशक के रूप में पदनामित) के रूप में नियुक्त करती है।

[फा. सं. 9/21/2006-बीओ-1]

जी. बी. सिंह, उप सचिव

New Delhi, the 7th November, 2007

S.O. 3255.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980, read with sub-clause (1) of clause 3, sub-clause (1) of clause 8 of the Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India hereby appoints Shri G. S. Vedi, (DoB: 28-06-1950) General Manager, Punjab & Sind Bank, as a whole time director (designated as Executive Director) Canara Bank in the pay scale of Rs. 22050-500-24050 from the date of his taking over charge of the post and until further orders or till the date of his superannuation i.e. up to 30th June, 2010, whichever is earlier.

[F. No. 9/21/2006-BO-1]

G. B. SINGH, Dy. Secy.

शुद्धि-पत्र

नई दिल्ली, 8 नवम्बर, 2007

का.आ. 3256.—इस विभाग की दिनांक 7 नवम्बर, 2007 की समसंख्यक अधिसूचना, जो श्री जे. पी. दुआ, महाप्रबंधक, ओरियंटल बैंक ऑफ कामर्स, की इलाहाबाद बैंक में पूर्णकालिक निदेशक (कार्यपालक निदेशक के रूप में पदनामित) के रूप में नियुक्ति के संबंध में है, में “उनके कार्यभार ग्रहण करने की तारीख से पांच वर्ष की अवधि के लिए और अगले आदेश होने तक” शब्दों के स्थान पर “उनके कार्यभार ग्रहण करने की तारीख से और अगले आदेश होने तक अथवा उनकी अधिवर्षिता की तारीख, यथा 30 अगस्त, 2012 तक, जो भी पहले हो” पढ़ा जाए

[फा. सं. 9/21/2006-बीओ-1]

जी. बी. सिंह, उप सचिव

CORRIGENDUM

New Delhi, the 8th November, 2007

S.O. 3256.—In the notification of this Department of even number dated 7th November, 2007 regarding appointment of Shri J.P. Dua General Manager, Oriental Bank of Commerce as a whole time director (designated as Executive Director) Allahabad Bank, the words ‘for a period of five years from the date of his taking over charge of the post and until further orders, whichever is earlier’ may be read as “from the date of his taking over charge of the post and until further orders or till the date of his superannuation i.e. up to 30th August, 2012, whichever is earlier”.

[F. No. 9/21/2006-BO-1]

G. B. SINGH, Dy. Secy.

विदेश मंत्रालय

नई दिल्ली, 23 अक्टूबर, 2007

का.आ. 3257.—राजनयिक कौंसली अधिकारी (शपथ एवं शुल्क) अधिनियम 1948 (1948 का 41वां) के 2 के अंक (क) के अनुसरण में केन्द्रीय सरकार एतद्वारा भारत का प्रधान कौंसलावास, सेंट पीटर्सबर्ग (रशिया) में श्री पी. के. गौर, सहायक को 23-10-2007 से सहायक कौंसली अधिकारी का कार्य करने हेतु प्राधिकृत करती है।

[सं.टी- 4330/01/2006]

प्रीतम लाल, अवर सचिव (कौंसु.)

MINISTRY OF EXTERNAL AFFAIRS

New Delhi, the 23rd October, 2007

S.O. 3257.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948, the Central Government hereby authorize Shri P.K. Gaur, Assistant to perform the duties of Assistant Consular Officer in the Consulate General of India, St. Petersburg (Russia) with effect from 23rd October, 2007.

[No. T. 4330/1/2006]

PRITAM LAL, Under Secy. (Consular)

संस्कृति मंत्रालय

नई दिल्ली, 18 अक्टूबर, 2007

का.आ. 3258.—केंद्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम 4 के अनुसरण में संस्कृति मंत्रालय के अन्तर्गत आने वाले निम्नलिखित कार्यालयों को, जिनमें 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :-

- (i) भारतीय पुरातत्व सर्वेक्षण, रायपुर मंडल, रायपुर।
- (ii) भारतीय पुरातत्व सर्वेक्षण, उत्खनन शाखा, नागपुर।
2. यह अधिसूचना राजपत्र में प्रकाशन की तारीख से प्रवृत्त होगी।

[सं. 1-1/2007-हिन्दी]

मोहिनी हिंगोरानी, निदेशक (रा. भा.)

MINISTRY OF CULTURE

New Delhi, the 18th October, 2007

S.O. 3258.—In pursuance of Sub-rule (4) of Rule 10 of the Official Languages (use for official purpose of the Union) Rules, 1976 the Central Govt. hereby notifies the following offices under the Ministry of Culture wherein more than 80% staff have acquired working knowledge of Hindi :—

- (i) Archaeological Survey of India, Raipur Circle, Raipur.
- (ii) Archaeological Survey of India, Excavation Branch, Nagpur.
2. This notification shall come into force from the date of publication in the Official Gazette.

[No. 1-1/2007-Hindi]

MOHINI HINGORANI, Director (OL)

सूचना और प्रसारण मंत्रालय

नई दिल्ली, 31 अक्टूबर, 2007

का.आ. 3259.—केंद्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में, आकाशवाणी महानिदेशालय (सूचना और प्रसारण मंत्रालय) के निम्नलिखित अधीनस्थ कार्यालयों, जिनके 80 प्रतिशत से अधिक कर्मचारीवृन्द ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है :-

1. आकाशवाणी, विशाखापटनम
2. आकाशवाणी, पौड़ी
3. आकाशवाणी, सतारा
4. आकाशवाणी, जमशेदपुर
5. आकाशवाणी, हिसार
6. विज्ञापन प्रसारण सेवा, आकाशवाणी, बेंगलूर

[संख्या ई-11017/6/2007-हिन्दी]

समय सिंह कटारिया, निदेशक (राजभाषा)

MINISTRY OF INFORMATION AND BROADCASTING

New Delhi, the 31st October, 2007

S.O. 3259.—In pursuance of Sub-rule (4) of Rule 10 of the Official Languages (use for official purpose of the Union) Rules, 1976 the Central Government hereby notifies the following subordinate offices of DG:A.I.R. (Ministry of Information and Broadcasting), more than 80% of the staff where have acquired the working knowledge of Hindi.

1. A.I.R., Vishakhapatnam.
2. A.I.R., Pauri.
3. A.I.R., Satara.
4. A.I.R., Jamshedpur.
5. A.I.R., Hissar.
6. Commercial Broadcasting Service, A.I.R., Bangalore.

[F.No. E-11017/6/2007-Hindi]

S.S. KATARIA, Director (O.L.)

नई दिल्ली, 19 अक्टूबर, 2007

का.आ. 3260.—इस मंत्रालय की दिनांक 6 अगस्त, 2007 की समसंख्यक अधिसूचना के अनुक्रम में और चलचित्र (प्रमाणन) नियमावली, 1983 के नियम 7 और 8 के साथ पठित चलचित्र अधिनियम, 1952 (1952 का 37) की धारा 5 की उप धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केंद्र सरकार तत्काल प्रभाव से दो वर्षों की अवधि के लिए या अगले आदेशों तक, जो भी पहले हो, केंद्रीय फिल्म प्रमाणन बोर्ड के मुम्बई सलाहकार पैनल की सदस्य के रूप में श्रीमती अलका सिंह, 'कृतिका', वाटरफील्ड रोड, बांद्रा (प), मुम्बई - 400050 को नियुक्ति करती है।

[फा सं. 809/4/2007-एफ (सी)]

संगीता सिंह, निदेशक (फिल्म)

New Delhi, the 19th October, 2007

S.O. 3260.—In continuation of this Ministry's Notification of even number dated 6th August, 2007 and in exercise of the powers conferred by sub-section (1) of Section 5 of the Cinematograph Act, 1952 (37 of 1952) read with rules 7 and 8 of the Cinematograph (Certification) Rules, 1983 the Central Government is pleased to appoint Smt. Alka Singh, 'Kruttika', Waterfield Road, Bandra (W), Mumbai-400050 as a member of the Mumbai advisory panel of the Central Board of Film Certification with immediate effect for a period of two years or until further orders, whichever is earlier.

[F. No. 809/4/2007-F(C)]

SANGEETA SINGH, Director (Films)

कोयला मंत्रालय

नई दिल्ली, 1 नवम्बर, 2007

का. आ. 3261.—केंद्रीय सरकार को यह प्रतीत होता है कि इससे उपाबद्ध अनुसूची में उल्लिखित भूमियों से कोयला अभिप्राप्त किये जाने की संभावना है;

अतः अब, केंद्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात उक्त अधिनियम कहा गया है) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस क्षेत्र में कोयले का पूर्वेक्षण करने के अपने आशय की सूचना देती है;

इस अधिसूचना के अंतर्गत आने वाले क्षेत्र के रेखांक सं. एसईसीएल/बीएसपी/जीएम (पीएलजी)/भूमि/312, तारीख 08 मार्च, 2007 का निरीक्षण कलेक्टर, रायगढ़ (छत्तीसगढ़) के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाऊस स्ट्रीट, कोलकाता 700001 के कार्यालय में या साऊथ ईस्टर्न कोलफील्ड्स लिमिटेड (राजस्व अनुभाग), सीपत रोड, बिलासपुर-495006 (छत्तीसगढ़) के कार्यालय में किया जा सकता है;

इस अधिसूचना के अंतर्गत आने वाली भूमि में हितबद्ध सभी व्यक्ति, उक्त अधिनियम की धारा 13 की उपधारा (7) में निर्दिष्ट सभी नक्शों, चार्टों और अन्य दस्तावेजों को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से नब्बे दिन के भीतर भारसाधक अधिकारी या विभागाध्यक्ष (राजस्व), साऊथ ईस्टर्न कोलफील्ड्स लिमिटेड (राजस्व अनुभाग), सीपत रोड, बिलासपुर -495006 (छत्तीसगढ़) को भेजेंगे।

अनुसूची

बिजारी विवृत खान का विस्तार
मांड रायगढ़ कोयला क्षेत्र
रायगढ़ क्षेत्र
जिला- रायगढ़ (छत्तीसगढ़)

रेखांक संख्या-एसईसीएल/बीएसपी/जीएम (पीएलजी)/भूमि/312 तारीख 08 मार्च, 2007 (पूर्वेक्षण के लिए अधिसूचना भूमि दर्शाते हुए)

क्र. सं.	ग्राम	पटवारी हल्का नंबर	बंदोबस्त नंबर	तहसील	जिला	क्षेत्र हेक्टर में	टिप्पण
1.	रूमकेरा	26	275	धरघोडा	रायगढ़	35,000	भाग
योग:- 35,000 हेक्टर (लगभग) या 86.48 एकड़ (लगभग)							

सीमा वर्णन

क-ख-ग रेखा रूमकेरा बिजारी ग्रामों की सम्मिलित सीमा पर "क" बिन्दु से आरंभ होती है और भागतः रूमकेरा-बिजारी, रूमकेरा-पोरडा ग्रामों की सम्मिलित सीमा के साथ गुजरती हुई "ग" बिन्दु पर मिलती है।

ग-घ-क रेखा ग्राम रूमकेरा से होती हुई बाद में भागतः रूमकेरा-बिजारी ग्रामों की सम्मिलित सीमा के साथ गुजरती हुई आरंभिक "क" बिन्दु पर मिलती है।

[मिसिल सं. 43015/5/2007-पीआरआईडब्ल्यू-1]

एम. शहाबुद्दीन, अवर सचिव

MINISTRY OF COAL**New Delhi, the 1st November, 2007**

S.O. 3261.—Whereas it appears to the Central Government that Coal is likely to be obtained from the lands mentioned in the Schedule hereto annexed;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal therein.

The plan bearing Number: SECL/BSP/GM(Plg)/Land/312 dated 08th March, 2007 of the area covered by this notification can be inspected in the office of the Collector, Raigarh (Chhattisgarh) or in the office of the Coal Controller, 1, Council House Street, Kolkata-700001 or in the office of the South Eastern Coalfields Limited (Revenue Section), Seepat Road, Bilaspur-495006 (Chhattisgarh).

All persons interested in the land covered by this notification shall deliver all maps, charts and other documents referred to in sub-section (7) of Section 13 of the said Act to the office-in-charge or Head of the department (Revenue), South Eastern Coalfields Limited, Seepat Road, Bilaspur -495006 (Chhattisgarh), within ninety days from the date of publication of this notification in the Official Gazette.

SCHEDULE**EXTENSION OF BIJARI OPEN CAST MINE****MAND RAIGARH COAL FIELDS****RAIGARH AREA****DISTRICT - RAIGARH (CHHATTISGARH)**

Plan No SECL/BSP/GM (Plg)/Land/ 312 dated 08th March, 2007 (Showing the land notified for prospecting).

Sl. No.	Village	Patwari Halka Number	Settlement Number	Tehsil	District	Area in hectares	Remarks
1	Runkera	26	275	Gharghoda	Raigarh	35.000	Part
Total :- 35.000 hectares (Approximately) or 86.48 acres (Approximately)							

BOUNDARY DESCRIPTION:—

- A-B-C Line starts from point "A" on the common boundary of village Runkera-Bijari and Passes partly along the common boundary of villages Runkera-Bijari, Runkera Porda and meet at point "C"
- C-D-A Line passes through village Runkera, then partly along the common boundary of villages Runkera-Bijari and meets at the starting point "A"

[No. 43015/5/2007-PRW-1]

M. SHAHABUDEEN, Under Secy.

नई दिल्ली, 1 नवम्बर, 2007

का. आ. 3262.—केंद्रीय सरकार को यह प्रतीत होता है कि, इससे उपावद्ध अनुसूची में उल्लिखित भूमि में कोयला अभिप्राप्त किये जाने की संभावना है;

अतः अब केंद्रीय सरकार कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात उक्त अधिनियम कहा गया है) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस क्षेत्र में कोयले का पूर्वक्षण करने के अपने आशय की सूचना देती है।

इस अधिसूचना के अंतर्गत आने वाले क्षेत्र के रेखांक सं. एसईसीएल/बीएसपी/जीएम (पीएलजी)/भूमि/311 तारीख 2 फरवरी, 2007 का निरीक्षण कलेक्टर कोरबा (छत्तीसगढ़) के कार्यालय में या कोयला नियंत्रक 1 में काउंसिल हाऊस स्ट्रीट, कोलकाता 700 001 के कार्यालय में या साऊथ ईस्टर्न कोलफील्ड्स लिमिटेड (राजस्व अनुभाग), सीपत रोड, बिलासपुर-495006 (छत्तीसगढ़) के कार्यालय में किया जा सकता है।

इस अधिसूचना के अंतर्गत आने वाली भूमि में हितबद्ध सभी व्यक्ति उक्त अधिनियम की धारा 13 की उपधारा (7) में निर्दिष्ट सभी नकशों, चार्टों और अन्य दस्तावेजों को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से नब्बे दिन के भीतर भारसाधक अधिकारी या विभागाध्यक्ष (राजस्व), साऊथ ईस्टर्न कोलफील्ड्स लिमिटेड, सीपत रोड, बिलासपुर-495006 (छत्तीसगढ़) को भेजेंगे।

अनुसूची

पोंडी ब्लाक पहला विस्तार (गेवरा विस्तार)

गेवरा क्षेत्र

जिला-कोरबा (छत्तीसगढ़)

रेखांक संख्या-एसईसीएल/बीएसपी/जीएम (पीएलजी)/भूमि/311 तारीख 2 फरवरी, 2007

(पूर्वोक्षण के लिए अधिसूचना भूमि दर्शाते हुए)

क्रम संख्या	ग्राम	पटवारी हल्का नम्बर	खेवट नम्बर	तहसील	जिला	क्षेत्र हैक्टर में	टिप्पण
1.	आमगांव	12	36	कटघोरा	कोरबा	33.00	भाग
2.	बहानपाट	20	30	कटघोरा	कोरबा	26.00	भाग
3.	भठोरा	20	29	कटघोरा	कोरबा	57.00	भाग
4.	भिलाई बाजार	19	31	कटघोरा	कोरबा	85.00	भाग
5.	रलिया	20	34	कटघोरा	कोरबा	74.00	भाग
योग : 275.00 हैक्टर (लगभग) या 679.53 एकड़ (लगभग)							

सीमा वर्णन :

क-ख रेखा ग्राम आमगांव में "क" बिन्दु से आरंभ होती है और ग्राम आमगांव रलिया से गुजरती हुई "ख" पर मिलती है।

ख-ग-घ-ङ रेखा ग्राम रलिया से गुजरती हुई "ङ" बिन्दु पर मिलती है।

ङ-च-छ रेखा भागतः ग्राम पोंडी-भिलाई बाजार की सम्मिलित सीमा के साथ होती हुई ग्राम बहानपाट, भठोरा से गुजरती हुई "छ" बिन्दु पर मिलती है।

छ-ज-झ-ञ रेखा, ग्राम भठोरा से गुजरती है फिर भागतः ग्राम भठोरा-भिलाई बाजार की सम्मिलित सीमा से गुजरती हुई "ज" बिन्दु पर मिलती है।

ज-ट रेखा ग्राम भिलाई बाजार-रलिया से गुजरती हुई "ट" बिन्दु पर मिलती है।

ट-क रेखा ग्राम रलिया-आमगांव से गुजरती है और आरंभिक "क" बिन्दु पर मिलती है।

[फा. सं.-43015/9/2007-पी. आर. आई. डब्ल्यू-1]

एम. शहाबुद्दीन, अवर सचिव

New Delhi, the 1st November, 2007

S.O. 3262.—Whereas it appears to the Central Government that Coal is likely to be obtained from the lands mentioned in the Schedule hereto annexed;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 4 of the Coal Bearing Areas (Acquisition and development) Act, 1957 (20 of 1957), (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal therein.

The plan bearing Number: SECL/BSP/GM(Plg)/LAND/311 dated 2nd February, 2007 of the area covered by this notification can be inspected in the Office of the Collector, Korba (Chhattisgarh) or in the Office of the Coal Contrôller, 1, Council House Street, Kolkata-700001 or in the Office of the South Eastern Coalfields Limited (Revenue Section), Seepat Road, Bilaspur-495006 (Chhattisgarh).

All persons interested in the land covered by this notification shall deliver all maps, charts and other documents referred to in sub-section (7) of Section 13 of the said Act to the officer-in-charge or Head of the department (Revenue), South Eastern Coalfields Limited, Seepat Road, Bilaspur - 495006 (Chhattisgarh), within ninety days from the date of publication of this notification in the Official Gazette.

SCHEDULE

PONDI BLOCK 1ST EXTENSION (Gevra Extension)

GEVRA AREA

DISTRICT - KORBA (CHHATTISGARH)

Plan No. SECL/BSP/G.M. (Plg)/LAND/311 dated 2nd February, 2007

(Showing the land notified for prospecting)

Sl. No.	Village	Patawari Halka number	Khewat number	Tahsil	District	Area in hectares	Remarks
1.	Amgaon	12	36	Katghora	Korba	33.00	Part
2.	Bahanpat	20	30	Katghora	Korba	26.00	Part
3.	Bhathora	20	29	Katghora	Korba	57.00	Part
4.	Bhilaibazar	19	31	Katghora	Korba	85.00	Part
5.	Ralia	20	34	Katghora	Korba	74.00	Part

Total : 275.00 hectares (Approximately) or 679.53 acres (Approximately)

BOUNDARY DESCRIPTION :—

- A—B Line starts from point “A” in Village Amgaon and passes through villages Amgaon—Ralia, and meets at point “B”.
- B-C-D-E Line passes through village Ralia and meets at point “E”.
- E-F-G Line passes partly along the common boundary of villages Pondi and Bhilaibazar then through villages Bahanpat—Bhathora and meet at Point “G”.
- G-H-I-J Line passes in village Bhathora then along the partly common boundary of villages Bhathora—Bhilaibazar and meets at point “J”.
- J—K Line passes through villages Bhilaibazar—Ralia and meets at point “K”.
- K—A Line passes through villages Ralia—Amgaon and meets at the starting point “A”.

[F.No.-43015/9/2007-PRIW-I]

M. SHAHABUDEEN, Under Secy.

नई दिल्ली, 1 नवम्बर, 2007

का. आ. 3263.—केन्द्रीय सरकार ने, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) की धारा 7 की उपधारा (1) के अधीन जारी भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्या का.आ. 1968, तारीख 12 मई, 2006 द्वारा, जो भारत के राजपत्र, भाग 2, खंड 3, उपखंड (iii) तारीख 20 मई, 2006 में प्रकाशित की गई थी, उस अधिसूचना से संलग्न अनुसूची में यथा वर्णित 529.24 हेक्टर (लगभग) या 1307.75 एकड़ (लगभग) माप वाली भूमि और ऐसी भूमि में या उस पर के सभी अधिकारों और यथा वर्णित 24.34 हेक्टर (लगभग) या 60.14 एकड़ (लगभग) माप वाली भूमि में खनन अधिकार के अर्जन करने के अपने आशय की सूचना दी थी;

और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 8 के अनुसरण में केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार का, पूर्वोक्त रिपोर्ट पर विचार करने के पश्चात् और महाराष्ट्र सरकार से परामर्श करने के पश्चात् यह समाधान हो गया है कि :—

(क) इससे संलग्न अनुसूची 'क' में वर्णित 529.24 हेक्टर (लगभग) या 1307.75 एकड़ (लगभग) माप वाली भूमि के सभी अधिकार, और

(ख) इससे संलग्न अनुसूची 'ख' में वर्णित 24.34 हेक्टर (लगभग) या 60.14 एकड़ (लगभग) माप वाली भूमि में खनिजों के खनन, खदान बोर करने, उनकी खुदाई करने और तलाश करने, उन्हें प्राप्त करने, उन पर कार्य करने और उन्हें ले जाने के अधिकार अर्जित किए जाने चाहिए।

अतः अब, केंद्रीय सरकार कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) की धारा 9 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है, कि :-

(क) अनुसूची 'क' में वर्णित 529.24 हेक्टर (लगभग) या 1307.75 एकड़ (लगभग) माप वाली भूमि के सभी अधिकार, और

(ख) अनुसूची 'ख' में वर्णित 24.34 हेक्टर (लगभग) या 60.14 एकड़ (लगभग) माप वाली भूमि में खनिजों के खनन, खदान, बोर करने, उनकी खुदाई करने और तलाश करने, उन्हें प्राप्त करने, उन पर कार्य करने और उन्हें ले जाने के अधिकार अर्जित किए जाते हैं।

इस अधिसूचना के अंतर्गत आने वाले क्षेत्र के रेखांक सं. सी-1(ई)III/एफयूआर/747-0906 तारीख 27 सितम्बर, 2006 का निरीक्षण कलेक्टर, नागपुर (महाराष्ट्र) के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाऊस स्ट्रीट, कोलकाता-700 001 के कार्यालय में या वेस्टर्न कोलफील्ड्स लिमिटेड (राजस्व विभाग), कोल ईस्टेट, सिविल लाईन्स, नागपुर-440 001 (महाराष्ट्र) के कार्यालय में किया जा सकता है।

अनुसूची "क"

नया मकरधोकरा . 1 विवृत खंड

उमरेर क्षेत्र

जिला-नागपुर (महाराष्ट्र)

(रेखांक सं. सी-1(ई)III/एफयूआर/747-0906 तारीख 27 सितम्बर, 2006)

सभी अधिकार

क्रम संख्या	ग्राम का नाम	पटवारी सर्किल संख्या	तहसील	जिला	निजी भूमि क्षेत्र हेक्टर में	सरकारी भूमि क्षेत्र हेक्टर में	कुल क्षेत्र हेक्टर में	टिप्पणी
1.	कान्हवा	22	उमरेर	नागपुर	79.40	0.77	80.17	भाग
2.	शिरपुर	22	उमरेर	नागपुर	290.86	18.63	309.49	भाग
3.	कटारा	22	उमरेर	नागपुर	107.80	—	107.80	भाग
4.	खुर्सापार	22	उमरेर	नागपुर	30.96	0.82	31.78	भाग
कुल :					509.02	20.22	529.29	

कुल क्षेत्र : 529.24 हेक्टर (लगभग)
या 1307.75 एकड़ (लगभग)

ग्राम कान्हवा में अर्जित किए प्लॉट संख्यांक :

6, 7, 8, 13, 14/1-14/2, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25/1-25/2, 26, 27/1-27/2, 28, 29, 34/1-34/2-34/3, 38, 39, 40, 41, 42, 44/1-44/2, 45, 46, 47, 48, 49/1-49/2-50, 75, 76, 77, 82, 83, 84, 87/1-87/2-87/3, 88/1-88/2-88/3-88/4, 89, सड़क (भाग).

ग्राम शिरपुर में अर्जित किए प्लॉट संख्यांक :

6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 39, 40, 41, 42, 43, 44, 45, 46/1-46/2-46/3, 47, 48/1-48/2, 49, 50/1क-50/1ख-50/2, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61/1-61/2-61/3-61/4-61/5-61/6-61/7-61/8, 62, 63, 64/1-64/2-64/3, 65, 66, 67,

68, 69, 70/1-70/2-70/3, 71, 72/1-72/2, 75/1-75/2, 76/1-76/2, 77/1-77/2, 78, 82, 83/1-83/2, 84/1-84/2, 120, 121/1-121/2, 122, 123, 124, 125, 126, 127/1-127/2, 128/1-128/2-128/3, 129/1-129/2-129/3-129/4-129/5, 130/1-130/2-130/3-130/4-130/5, 131/1-131/2-131/3, 132/1-132/2, 133/1-133/2, 134, 135, 136, 137, 150, 151, 152, 153, 154/1-154/2, 155/1-155/2, 156/1-156/2-156/3-156/4, 157, 158, 159/1-159/2-159/3-159/4, 160, 161, 162, 163, 164, 165, 166, 167/1-167/2क-167/2ख, 168/1-168/2, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185/1-185/2, 186, 187, 188/1-188/2, 189/1-189/2, 190, 191, 192, 193, 194/1-194/2, 195, 196/1-196/2क-196/2ख, 197/1-197/2-197/3, 198/1-198/2, 199/1-199/2, 200, 201, 203/1-203/2, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228/1-228/2, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247/1-247/2, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 335, 336, 340, 341, 342, 343, 344, 345, 346, सड़क (भाग), नाला (भाग).

ग्राम कटारा में अर्जित किए प्लॉट संख्यांक:

34/1-34/2-34/3-34/4, 35/1क-35/1ख-35/2-35/3, 36/1-36/2, 40/1-40/2, 41/1-41/2-41/3-41/4, 42/1क-42/2क-42/1ख-42/2ख-42/3क-42/3ख, 43/1क-43/1ख, 43/2, 44, 45/1-45/2-45/3-45/4-45/5, 46/1-46/2-46/3-46/4, 47/1-47/2, 48/1-48/2-48/3, 49/1-49/2, 50/1-50/2, 51/1-51/2-51/3-51/4, 52/1-52/2, 53/1क-53/1ख-53/2-53/3, 55/1-55/2, 56/1-56/2, 57/1क-57/1ख-57/1ग-57/2क-57/3क-57/3ख-57/3ग-57/3क-57/3ख-57/2ख-57/2ग-57/3ग, 58/1-58/2, 98/1-98/2, 99/1-99/2-99/3-99/4, 100/1क-100/1ख-100/2-100/3, 101/1-101/2-101/3-101/4-101/5-101/6-101/7-101/8-101/9-101/10, 102/1क-102/1ख-102/2क-102/2ख, 103/1-103/2, 104, 105, 106, 107/1-107/2, 108, 112, 113/1-113/2-113/3-113/4, 133, 134, 135, 136, 137, 138, 139, 140, 141.

ग्राम खुर्सापार में अर्जित किए प्लॉट संख्यांक :

76, 78/1, 78/2, 78/3, 79, 80/1-80/2, 89, 90, 91/1-91/2-91/3-91/4, 92, 93, 94, सड़क (भाग).

सीमा वर्णन :

क-ख-ग-घ: रेखा बिन्दु क से आरम्भ होती है और ग्राम कटारा से गुजरती हुई प्लॉट संख्यांक 36/1-36/2, 35/1क-35/1ख-35/2-35/3, 133, 34/1-34/2-34/3-34/4, 48/1-48/2-48/3, 49/1-49/2, 50/1-50/2, 53/1क-53/1ख-53/2-53/3, -55/1-55/2, 58/1-58/2, 57/1क-57/1ख-57/1ग-57/2क-57/3क-57/3ख-57/3ग-57/3क-57/3ख-57/2ख-57/2ग-57/3ग, 99/1-99/2-99/3-99/4, 141, 98/1-98/2 की बाहरी सीमा के साथ जाती हुई ग्राम कटारा और शिरपुर की सम्मिलित ग्राम सीमा पर बिन्दु 'घ' पर मिलती है।

घ-ङ-च: रेखा ग्राम शिरपुर से होकर जाती हुई प्लॉट संख्या 63 की बाह्य सीमा के साथ जाती हुई नाला पार करती है और प्लॉट संख्यांक 72/1-72/2, 75/1-75/2, 78, 82, 83/1-83/2, 84/1-84/2 की बाह्य सीमा के साथ गुजरती हुई सड़क पार करती है और प्लॉट संख्यांक 126, 125, 124, 123, 122, 121/1-121/2, 134, 135, 136, 137 की बाह्य सीमा के साथ गुजरती हुई बिन्दु 'च' पर मिलती है।

च-छ-ज: रेखा ग्राम शिरपुर से होकर सड़क की बाह्य सीमा तथा ग्राम शिरपुर एवं कान्हा की सम्मिलित ग्राम सीमा के साथ जाती हुई बिन्दु 'ज' पर मिलती है।

ज-झ-ञ: रेखा ग्राम कान्हा से होकर प्लॉट संख्यांक 88/1-88/2-88/3-88/4, 87/1-87/2-87/3 की बाह्य सीमा के साथ जाती हुई सड़क पार करती है और प्लॉट संख्यांक 84, 83, 82, 89, 77, 76, 75 की बाह्य सीमा से गुजरती हुई फिर सड़क पार करती है और प्लॉट संख्यांक 75, 76, 77, 89, 82, 83, 84, 87/1-87/2-87/3, 88/1-88/2-88/3-88/4 की बाह्य सीमा से जाती हुई फिर सड़क पार करती है और ग्राम शिरपुर तथा कान्हा की सम्मिलित ग्राम सीमा पर बिन्दु 'ज' पर मिलती है।

ञ-ट-ठ-ड: रेखा ग्राम कान्हा से होकर जाती है तथा प्लॉट संख्यांक 46 की बाह्य सीमा के साथ जाती हुई सड़क पार करती है और प्लॉट संख्यांक 50, 22, 21, 20, 6, 7, 8, 15, 14/1-14/2, 13, 29, 38 की बाह्य सीमा से गुजरती हुई फिर से सड़क पार करती है तथा प्लॉट संख्यांक 42, 44/1-44/2, 34/1-34/2-34/3 की बाह्य सीमा के साथ गुजरती हुई ग्राम कान्हा तथा धामनगांव (कामठी) की सम्मिलित ग्राम सीमा पर बिन्दु 'ड' पर मिलती है।

ड-ढ-ण-त: रेखा ग्राम कान्हा से होकर प्लॉट संख्यांक 34/1-34/2-34/3, 44/1-44/2 की बाह्य सीमा के साथ जाती हुई ग्राम कान्हा एवं शिरपुर की सम्मिलित ग्राम सीमा को पार करती हुई नाला पार करती है और नाला एवं प्लॉट संख्यांक 155/1-155/2, 342, 167/1-167/2ए-167/2बी, 168/1-168/2 की बाह्य सीमा के साथ गुजरती हुई ग्राम शिरपुर एवं कान्हा की सम्मिलित ग्राम सीमा को पार करती हुई ग्राम खुर्सापार से होती हुई प्लॉट संख्यांक 94, 93, 92, 91/4-91/3-91/2-91/1, 90, 89 की बाह्य सीमा से गुजरती हुई सड़क पार करती है और प्लॉट संख्यांक 80/1-80/2, 78/1-78/2-78/3, 76 की बाह्य सीमा के साथ जाती हुई ग्राम खुर्सापार और शिरपुर की सम्मिलित ग्राम सीमा को पार करती है और ग्राम शिरपुर

से प्लॉट संख्यांक 252, 253, 260, 259, 258, 257, 256, 248, 247/1- 247/2, 246, 245, 340 की बाह्य सीमा से गुजरती हुई फिर से सड़क पार करती है और प्लॉट संख्यांक 227, 335, 336, 211, 210, 209, 203/1- 203/2, 201 की बाह्य सीमा के साथ जाती हुई बिन्दु 'त' पर मिलती है।

त-थ-द-क: रेखा ग्राम शिरपुर से होती हुई प्लॉट संख्यांक 198/1- 198/2 तथा सड़क की बाह्य सीमा के साथ गुजरती हुई सड़क पार करती है और प्लॉट संख्यांक 131/1- 131/2- 131/3, 130/1- 130/2- 130/3- 130/4- 130/5, 6 की बाह्य सीमा से गुजरती हुई सड़क पार करती है तथा प्लॉट संख्यांक 14, 15, 17, 18, 19, 20, 22, 25, 26, 47, 46/1- 46/2- 46/3, 40 की बाह्य सीमा के साथ-साथ जाती हुई नाले को पार करती है और प्लॉट संख्या 39 की बाह्य सीमा के साथ जाती है और ग्राम शिरपुर तथा कटारा की सम्मिलित ग्राम सीमा को पार करती हुई ग्राम कटारा के प्लॉट संख्यांक 108, 107/1- 107/2, 112, 113/1- 113/2- 113/3- 113/4, 41/1- 41/2- 41/3- 41/4, 40/1- 40/2, 44, 36/1- 36/2 की बाह्य सीमा के साथ जाती हुई आरंभिक बिन्दु 'क' पर मिलती है।

अनुसूची "ख"

नया मकरधोकरा-1 ओपन कास्ट खंड

उमरेर क्षेत्र

जिला नागपुर (महाराष्ट्र)

(रेखांक सं. सी.1 (ई) III/एफयूआर/747-0906 तारीख 27 सितम्बर, 2006)

खनन अधिकारी

क्रम संख्या	ग्राम का नाम	पटवारी सकिल संख्या	तहसील	जिला	निजी भूमि क्षेत्र हेक्टर में	सरकारी भूमि क्षेत्र हेक्टर में	कुल क्षेत्र हेक्टर में	टिप्पणी
1.	शिरपुर	22	उमरेर	नागपुर	23.34	1.00	24.34	भाग
					कुल क्षेत्र:		24.34 हेक्टर (लगभग)	
						या	60.14 एकड़ (लगभग)	
कुल योग:- अनुसूची 'क'					.	सभी अधिकार		
					=	529.24 हेक्टर (लगभग)		
					या	1307.75, एकड़ (लगभग)		
अनुसूची 'ख'					.	खनन अधिकार		
					=	24.34 हेक्टर (लगभग)		
					या	60.14 एकड़ (लगभग)		

ग्राम शिरपुर में अर्जित किए प्लॉट संख्यांक:-

112/1-112/2क-112/2ख-112/3क-112/3ख, 113/1-113/2, 114/1-114/2-115/1-115/2, 116/1क-116/1ख-116/2-116/3, 117/1-117/2, 118-119/1-119/2, 138, 139, 140, 141/1-141/2-141/3क-141/3ख, 142/1-142/2, सड़क (भाग)

सीमा वर्णन:-

ध.न.च.ध: रेखा बिन्दु से आरंभ होती है और ग्राम शिरपुर से होकर सड़क पार करती हुई प्लॉट संख्यांक 112/1-112/2क-112/ख-112/3क-112/3ख, 113/1-113/2, 141/1-141/2-141/3क-141/3ख, 142/1-142/2, 140, 139, 138, 141/1-141/2-141/3क-141/3ख, 119/1-119/2, 118, 117/1-117/2 की बाह्य सीमा के साथ जाती है और सड़क पार करती है फिर सड़क के बाहरी किनारे से गुजरती हुई आरंभिक बिन्दु 'ध' पर मिलती है।

[सं. 43015/2/2005-पी आर आई डब्ल्यू-1]

एम. शहाबुद्दीन, अवर सचिव

New Delhi, the 1st November, 2007

S.O. 3263.—Whereas by the notification of the Government of India in the Ministry of Coal number published in Part-II, Section- 3, sub-section (ii) of the Gazette of India, dated the 20th May, 2006 vide S.O. 1968 dated the 12th May, 2006, issued under sub-section (1) of Section 7 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of

1957), the Central Government gave notice of its intention to acquire the land measuring 529.24 hectares (approximately) or 1307.25 acres (approximately) and All Rights in or over such land and land measuring 24.34 hectares (approximately) or 60.14 acres (approximately) in Mining Rights as described in the Schedule appended to that notification ;

And whereas the competent authority in pursuance of Section 8 of the said Act has made his report to the Central Government ;

And whereas the Central Government after considering the report aforesaid and after consulting the Government of Maharashtra, is satisfied that :—

- (a) the lands measuring 529.24 hectares (approximately) or 1307.25 acres (approximately) in all rights described in Schedule "A" appended hereto ; and
- (b) the rights to mine, quarry, bore, dig and search for win, work and carry away minerals in the land measuring 24.34 hectares (approximately) or 60.14 acres (approximately) in mining rights described in Schedule "B" appended hereto, should be acquired ;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 the Central Government hereby declares that :—

- (a) the lands measuring 529.24 hectares (approximately) or 1307.25 acres (approximately) in all rights described in Schedule "A", and
- (b) the rights to mine, quarry, bore, dig and search for win, work and carry away minerals in the land measuring 24.34 hectares (approximately) or 60.14 acres (approximately) in mining rights described in Schedule "B", are hereby acquired.

The plan bearing number C-1(E)III/FUR/747-0906 dated the 27th September, 2006 of the area covered by this notification may be inspected in the office of the Collector, Nagpur (Maharashtra) or in the office of the Coal Controller, I, Council House Street, Kolkata (Pin 700 001) or in the office of the Western Coalfields Limited (Revenue Department), Coal Estate, Civil Lines, Nagpur-440 001 (Maharashtra).

SCHEDULE 'A'

NEW MAKARDHOKRA I OPENCAST BLOCK, UMRER AREA

DISTRICT—NAGPUR (MAHARASHTRA)

(Plan No. C-1(E)III/FUR/747-0906 dated the 27th September, 2006).

All rights

Sl. No.	Name of village	Patwari circle number	Tahsil	District	Area in Hect. PVT Land	Area in Hect. Govt. Land	Total Area in Hect.	Remarks
1	Kanwha	22	Umrer	Nagpur	79.40	0.77	80.17	Part
2	Shirpur	22	Umrer	Nagpur	290.86	18.63	309.49	Part
3	Katara	22	Umrer	Nagpur	107.80	—	107.80	Part
4	Khursapar	23	Umrer	Nagpur	30.96	0.82	31.78	Part
Total :					509.02	20.22	529.24	

Total area : 529.24 hectares
(approximately)

or 1307.75 acres
(approximately)

Plot numbers acquired in village Kanwha :

6, 7, 8, 13, 14/1-14/2, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25/1-25/2, 26, 27/1-27/2, 28, 29, 34/1-34/2-34/3, 38, 39, 40, 41, 42, 44/1-44/2, 45, 46, 47, 48, 49/1-49/2, 50, 75, 76, 77, 82, 83, 84, 87/1-87/2-87/3, 88/1-88/2-88/3-88/4, 89, Road (Part).

Plot number acquired in village Sirpur :

6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 39, 40, 41, 42, 43, 44, 45, 46/1-46/2-46/3, 47, 48/1-48/2, 49, 50/1A-50/1B-50/2, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61/1-61/2-61/3-61/4-61/5-61/6-61/7-61/8, 62, 63, 64/1-64/2-64/3, 65, 66, 67, 68, 69, 70/1-70/2-70/3, 71, 72/1-72/2, 75/1-75/2, 76/1-76/2, 77/1-77/2, 78, 82, 83/1-83/2, 84/1-84/2, 120, 121/1-121/2, 122, 123, 124, 125, 126, 127/1-127/2, 128/1-128/2-128/3, 129/1-129/2-129/3-130/1-130/2-130/3-130/4-130/5, 131/1-131/2-131/3, 132/1-132/2, 133/1-133/2, 134, 135, 136, 137, 150, 151, 152, 153, 154/1-154/2, 155/1-155/2, 156/1-156/2-156/3-156/4, 157, 158, 159/1-159/2-159/3-159/4, 160, 161, 162, 163, 164, 165, 166, 167/1-167/2A-167/2B, 168/1-168/2, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185/1-185/2, 186, 187, 188/1-188/2, 189/1-189/2, 190, 191, 192, 193, 194/1-194/2, 195, 196/1-196/2A-196/2B, 197/1-197/2-197/3, 198/1-198/2, 199/1-199/2, 200, 201, 203/1-203/2, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228/1-228/2, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247/1-247/2, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 335, 336, 340, 341, 342, 343, 344, 345, 346, Road (Part), Nallah (Part).

Plot number acquired in village Katara :

34/1-34/2-34/3-34/4, 35/1A-35/1B-35/2-35/3, 36/1-36/2, 40/1-40/2, 41/1-41/2-41/3-41/4, 42/1A-42/2A-42/1B-42/2B-42/3A-42/3B, 43/1A-43/1B-43/2, 44, 45/1-45/2-45/3-45/4-45/5, 46/1-46/2-46/3-46/4, 47/1-47/2, 48/1-48/2-48/3, 49/1-49/2, 50/1-50/2, 51/1-51/2-51/3-51/4, 52/1-52/2, 53/1A-53/1B-53/2-53/3, 55/1-55/2, 56/1-56/2, 57/1A-57/1B-57/1C-57/2A-57/3A-57/3B-57/3C1-57/3A2-57/3A3-57/3B2-57/2B-57/2C-57/3C2, 58/1-58/2, 98/1-98/2, 99/1-99/2-99/3-99/4, 100/1A-100/1B-100/1C-100/2-100/3, 101/1-101/2-101/3-101/4-101/5-101/6-101/7-101/8-101/9-101/10, 102/1A-102/1B-102/2A-102/2B, 103/1-103/2, 104, 105, 106, 107/1-107/2, 108, 112, 113/1-113/2-113/3-113/4, 133, 134, 135, 136, 137, 138, 139, 140, 141.

Plot numbers acquired in village Khursapar :

76, 78/1-78/2-78/3, 79, 80/1-80/2, 89, 90, 91/1-91/2-91/3-91/4, 92, 93, 94, Road (Part).

Boundary Description :

- A-B-C-D :** Line starts from point 'A' and passes through village Katara along the outer boundary of plot numbers 36/1-36/2, 35/1A-35/1B-35/2-35/3, 133, 34/1-34/2-34/3-34/4, 48/1-48/2-48/3, 49/1-49/2, 50/1, 50/2, 53/1A-53/1B-53/2-53/3, 55/1-55/2, 58/1-58/2, 57/1A-57/1B-57/1C-57/2A-57/3A-57/3B-57/3C1-57/3A3-57/3B2-57/2B-57/3A2-57/2C-57/3C2, 99/1-99/2-99/3-99/4, 141, 98/1-98/2 and meets at common village boundary of villages Katara and Sirpur on point 'D'.
- D-E-F :** Line passes through village Sirpur along the outer boundary of plot number 63 crosses nallah and outer boundary of plot numbers 72/1-72/2, 75/1-75/2, 78, 82, 83/1-83/2, 84/1-84/2, crosses road than passes along the outer boundary of plot numbers 126, 125, 124, 123, 122, 121/1-121/2, 134, 135, 136, 137 and meets at point 'F'.
- F-G-H :** Line passes through village Sirpur along the outer boundary of road and along the common village boundary of villages Sirpur and Kanwha and meets at point 'H'.
- H-I-J :** Line passes through village Kanwha along the outer boundary of plot numbers 88/1-88/2-88/3-88/4, 87/1-87/2-87/3, crosses road than passes along the outer boundary of plot numbers 84, 83, 82, 89, 77, 76, 75, and passes along the outer boundary of plot numbers 75, 76, 77, 89, 82, 83, 84, 87/1-87/2-87/3, 88/1-88/2-88/3-88/4, crosses road and meets on common village boundary of villages Sirpur and Kanwha at point 'J'.
- J-K-L-M :** Line passes through village Kanwha along the outer boundary of plot numbers 46, crosses road than passes along the outer boundary of plot numbers 50, 22, 21, 20, 6, 7, 8, 15, 14/1, 14/2, 13, 29, 38, crosses road than passes along the outer boundary of plot numbers 42, 44/1-44/2, 34/1-34/2-34/3 and meets at common village boundary of villages Kanwha and Dhamangaon (Kamptee) at point 'M'.
- M-N-O-P :** Line passes through village Kanwha along the outer boundary of plot numbers 34/1-34/2-34/3, 44/1-44/2, crosses common village boundary of villages Kanwha and Sirpur then crosses nallah and proceeds along the outer boundary of nallah and plots numbers 155/1-155/2, 342, 167/1-167/2A-167/2B,

168/1- 168/2, crosses common village boundary of villages Sirpur and Khursapar than passes through village Khursapar along the outer boundary of plot numbers 94, 93, 92, 91/4- 91/3- 91/2- 91/1, 90, 89, crosses road than passes along the outer boundary of plot numbers 80/1- 80/2, 78/1- 78/2- 78/3, 76, crosses common village boundary of villages Khursapar and Sirpur than passes through village Sirpur along the outer boundary of plot numbers 252, 253, 260, 259, 258, 257, 256, 248, 247/1- 247/2, 246, 245, 340, crosses road than passes along the outer boundary of plot numbers 227, 335, 336, 211, 210, 209, 203/1- 203/2, 201, and meet at point 'P'.

P-Q-R-A: Line passes through village Sirpur along the outer boundary of plot numbers 198/1- 198/2 and then crosses road passes along with the outer boundary of plot numbers 131/1- 131/2- 131/3, 130/1- 130/2- 130/3- 130/4- 130/5, 6, crosses road than passes along with the outer boundary of plot numbers 14, 15, 17, 18, 19, 20, 22, 25, 26, 47, 46/1- 46/2- 46/3, 40, crosses nallah then along with the outer boundary of plot number 39, then crosses common village boundary of villages Sirpur and Katara then passes through village Katara along with the outer boundary of plot numbers 108, 107/1- 107/2, 112, 113/1- 113/2- 113/3- 113/4, 41/1- 41/2- 41/3- 41/4, 40/1- 40/2, 44, 36/1- 36/2, and meets at starting point 'A'.

SCHEDULE 'B'

NEW MAKARDHOKRA-I OPENCAST BLOCK, UMRER AREA

DISTRICT NAGPUR (MAHARASHTRA)

(Plan No. C-1(E)III/FUR/747-0906 dated the 27th September, 2006).

Mining rights

Sl No	Name of village	Patwari circle number	Tahsil	District	Area in Hect. PVT Land	Area in Hect. Govt. Land	Total Area in Hect.	Remarks
1	Shirpur	22	Umrer	Nagpur	23.34	1.00	24.34	Part
						Total Area : 24.34 hectares (approximately) or 60.14 acres (approximately)		
Grand Total :					Schedule 'A' - All Rights	=	529.24 hectares (approximately) or 1307.75 acres (approximately)	
					Schedule 'B' - Mining Rights	=	24.34 hectares (approximately) or 60.14 acres (approximately)	

Plot numbers acquired in village Sirpur :

112/1- 112/2A- 112/2B- 112/3A- 112/3B- 113/1- 113/2, 114/1- 114/2, 115/1- 115/2, 116/1A- 116/1B- 116/2- 116/3, 117/1- 117/2, 118, 119/1- 119/2, 138, 139, 140, 141/1- 141/2- 141/3A- 141/3B, 142/1- 142/2, Road (Part).

Boundary description :

S-T-F-S: Line start from point 'S' through village Sirpur crosses road then passes along with the outer boundary of plot numbers 112/1- 112/2A- 112/2B- 112/3A- 112/3B, 113/1- 113/2, 141/1- 141/2- 141/3A- 141/3B, 142/1- 142/2, 140, 139, 138, 141/1- 141/2- 141/3A- 141/3B, 119/1- 119/2, 118, 117/1- 117/2, crosses road then proceeds along the outer boundary of road and meets at starting point 'S'.

[F. No. 43015/2/2005- PRIW-1]

M. SHAHABUDEEN, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 15 अक्टूबर, 2007

का.आ. 3264.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एल.आई.सी. ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ संख्या 23/1992) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-10-2007 को प्राप्त हुआ था।

[सं. एल-17012/43/91-आई आर(बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

MINISTRY OF LABOUR & EMPLOYMENT

New Delhi, the 15th October, 2007

S.O. 3264.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 23/1992) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure in the industrial dispute between the employers in relation to the management of LIC of India and their workman, which was received by the Central Government on 12-10-2007.

[No. L-17012/43/91-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**

Dated the 1st October, 2007

PRESENT

SHRI A. R. SIDDIQUI, Presiding officer

C. R. No. 23/1992

I Party

Shri B.M. Thippaswamy,
Manager,
(Since deceased Rep. by LR's)
S/o Shri Hanumanthappa,
Budhihal Village Mittur Post,
Harihar Taluk,
Chitradurga,
Karnataka State

II Party

The Divisional
Life Insurance
Corporation of India,
Divisional Office,
Udupi-576101
Karnataka State

AWARD

The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-17012/43/91-IR. B-II dated 12th February, 1992 for adjudication on the following schedule :

SCHEDULE

“Whether the action of the management of Life Insurance Corporation of India in dismissing the

services of Shri B. M. Thippaswamy is justified? If not, to what relief is/are the workman entitled?”

2. The first party workman by his claim statement, challenged the enquiry proceedings as opposed to the principles of natural justice, enquiry findings as suffering from perversity and the punishment of dismissal passed against him as unjust and illegal (pleadings with regard to validity and fairness or otherwise of the enquiry proceedings omitted, there being a separate finding on the said issue). While, challenging the enquiry findings, the first party contended that the enquiry officer being one of the officers of the management was biased against him and that by making a guess work he arrived at a conclusion that charges leveled against him have been proved. Likewise, the Disciplinary Authority did not apply its mind on the enquiry report and passed the impugned punishment order dismissing him from service, which punishment of dismissal was again shockingly disproportionate with the gravity of the misconduct alleged against him. Therefore, he requested this tribunal to exercise its powers under Section 11A of the ID Act, by setting aside the dismissal order and to reinstate him in service along with consequential benefits from the date of dismissal.

3. The management by way of its Counter Statement however, contended that the first party while was working with its Davangere Branch-II from 15-10-1980 during the year 1987, certain fraudulent transactions relating to certain LIC policies serviced by the branch came to light and immediately, thereafter, investigation was done in the matter and it was prima facie found that the first party was involved in those transactions including tampering and falsification of the records. Therefore, based upon the findings of the investigation, a charge sheet was issued to the first party under the Regulation 39 of LIC of India (Staff) Regulations, 1960 on 20-08-1988 and in terms of the aforesaid Regulations, the first party was placed under Suspension and after due notice of the charge sheet to the first party, domestic enquiry was conducted. The first party was intimated about the enquiry held against him and thereafter the enquiry officer after having conducted the enquiry in the manner prescribed and having afforded adequate opportunity to the first party proceeded with the enquiry in the absence of the first party as the first party wrote to the enquiry officer that he was not in a position to attend the enquiry without the assistance of an Advocate. Therefore, on the receipt of the enquiry findings holding the first party guilty of the charges, the disciplinary authority considered those findings along with the evidence brought on record and then issued a show cause notice to the first party proposing the punishment of dismissal. The first party submitted his reply and having taken into consideration his reply as well as the enquiry report, the proposed punishment of dismissal was confirmed. Therefore, the management contended that findings of the enquiry are valid, sound and legal and the

dismissal order passed against the first party is again perfectly justified and valid and the punishment of dismissal is commensurate to the gravity of the misconduct committed by him. In the result, the management requested this tribunal to dismiss the reference.

4. During the course of the first round of the trial, as could be read from the records, my predecessor took up the question of validity or otherwise of the enquiry proceedings conducted against the first party and after due trial of the said question/issue, order dated 15-12-1998 came to be passed by my learned predecessor recording a finding to the effect that the enquiry conducted against the first party was not against the principles of natural justice and accordingly answered the Preliminary Issue in favour of the management. Thereupon, by award dated 04-09-2001, my learned predecessor having considered the enquiry findings, rejected the reference.

5. Aggrieved by this order on Preliminary Issue and the aforesaid award, the LR's of the first party (by which time first party expired) moved to the Hon'ble High Court in Writ Petition No. 16321/2002 and his Lordship of our Hon'ble High Court vide order dated 15-07-2006 recorded a finding to the effect that the domestic enquiry held against the deceased workman was not fair and proper and thereupon set aside the aforesaid order dated 15-12-1998 as well as the award dated 04-09-2001 with a direction to this tribunal to dispose off the case afresh in accordance with law after providing opportunity to both the parties.

6. During, the course of second round of litigation i.e. after the remand the management while relying upon the three documents which were marked at Ex. M1 to M3 during the course of deposition of the enquiry officer further filed an affidavit of one witness by name Shri Ganesh G. Bhat along with other five documents marked during the course of his further examination chief. The first three documents marked during the course of deposition of the enquiry officer on behalf of the management are the letter of appointment of enquiry officer as M1, the proceedings of enquiry at Ex.M2 and the enquiry report at Ex.M3. The other five documents produced during the course of further examination chief of the second witness for the management are the letter of authority in favour of the witness to give evidence, the xerox copy of the charge sheet, show cause notice and the final order of dismissal passed against the first party marked at Ex.M5 to M8 (ought to have been marked at Ex.M4 to M7). In his affidavit Shri Ganesh G. Bhat, the second witness, after the enquiry officer, examined on behalf of the management has just repeated the various contentions taken by the management in its counter statement. In his cross examination it was elicited that he was working at Divisional Office, Dharwad in the year 1987 and was not working at Davangere branch in the said year and the first party has not worked under him at any branch at any point of time. It was further elicited that he knows the facts of the case based on records and not

personally. He denied the suggestion that the averments made in his affidavit as well as the contentions taken by the management in its Counter Statement are false and incorrect and that the first party did not misappropriate any loan amount of any policy holder and that the documents in that respect have been fabricated by the management. He was unable to say if the service record of the first party except the charge sheet in question was unblemished. He denied the suggestion that the first party has been victimised by issuing a false charge sheet. It was elicited that the first party was working as a Peon at the relevant point of time and was not supposed to handle or deal with the corporation records making any entry therein. He could not deny the suggestion that the first party expired on 23-10-1999.

7. As against this evidence, no evidence was adduced on behalf of the first party stating that the first party is no more. Thereupon the matter was posted to hear the learned counsels for the respective parties on merits and both of them have submitted their written arguments.

8. Learned counsel for the Second Party management in his arguments while, repeating the charge of misconduct against the first party that he misappropriated a sum of Rs. 3000/- being the loan amounts of two policy holders has further contended that on the basis of the enquiry findings which in turn were based upon oral and documentary evidence, charges of misconduct against the first party were proved and therefore, the disciplinary authority was justified in dismissing the first party from its services keeping in view the aforesaid enquiry report and the gravity of the charge of misconduct proved against the first party. The only relevant argument on behalf of the second party was that after the remand of the case, the management has produced oral and documentary evidence on merits as per the directions of the Hon'ble High Court but the first party did not appear nor let in any evidence and therefore, the second party has been able to prove the charges of misconduct on merits and in the result, reference is liable to be dismissed.

9. Whereas, learned counsel for the first party in his argument contended that after the remand of the case it was incumbent on the part of the management to adduce evidence on merits i.e. to prove the charges of misconduct leveled against the first party and since the management has not let in any such oral or documentary evidence to speak to the charges of misconduct committed by the first party, the only conclusion to be drawn would be that the dismissal order passed against the first party on the basis of the those charges of misconduct is liable to be set aside and the first party since deceased, is entitled to the backwages and all other consequential benefits now to be awarded to his LR's.

10. After having gone through the records and the evidence brought on record, I find substance in the arguments advanced for the first party. As noted above, by

the aforesaid order in Writ Petition, the Hon'ble High Court recorded a finding to the effect that the DE which was held against the deceased workman was not fair and proper and ultimately the Hon'ble High Court set aside the orders passed by this tribunal on the said DE as well as the award passed by this tribunal on the basis of the said order. Thereupon, when the matter was taken up before this tribunal after the remand, the management was called upon to lead evidence on merits of the case. Before this tribunal, the management as noted above, adduced the oral evidence of Mr. Ganesh G. Bhut and he simply repeated the various contentions taken by the management in its counter-statement. He gave details as to what all transpired from the stage of issuing charge sheet to the first party till the stage the dismissal order was passed against him. He uttered no single word much less with reference to any documents as to how and on what basis any of the charges of misconduct leveled against the first party stands proved. As noted above, in his cross-examination he admitted that he did not know anything about the facts of the present case personally and that his evidence is based upon the records. Therefore, the oral testimony of the said management witness is of no help to the management on merits of the case so to say in order to prove the charges of misconduct leveled against the first party.

11. Now coming to the documentary evidence. They again will not come to the rescue of the management in establishing the charges of misconduct. First of all, the documents at Ex. M1 to M3 and Ex. M4 to M7 are not at all relevant at this stage as they are the documents pertaining to the enquiry proceedings, the resultant enquiry report and the show cause notice and the dismissal order issued against the first party on the basis of the enquiry findings. Therefore, when the DE proceedings, itself, have been set aside and the enquiry findings do not survive any more, the aforesaid documents cannot first of all be read in evidence and even if, they are read in evidence, will not be coming to the rescue of the management to substantiate the charges of misconduct leveled against the first party.

12. In order to prove the charges, the management was required to produce fresh evidence, oral and documentary speaking to the fact that the deceased first party workman working as a Peon; indulged in such malpractices and in the process misappropriated certain amounts in respect of the loans of the policy holders belonging to the management. Therefore, there being no such evidence produced, there is absolutely, no hesitation in the mind of this tribunal to come to the conclusion that the charges of misconduct have remained to be proved against the first party. The contention of the management that the first party himself has not let in any evidence cannot be attached much significance as the burden to prove the charge of misconduct is squarely casts upon the shoulders of the management. Moreover, on this aspect their Lordship of Supreme Court in a decision reported in

1999(1) SC cases Page 517 Neeta Kaplish Vs Presiding Officer, Labour Court and Another have made the position very clear by laying down the principles to the effect that in a case where DE is held to be vitiated, the management has to lead evidence before the labour court to justify its action of discharge or dismissal of workman and where the management did not lead evidence the workman too was at liberty not to lead evidence and the relief claimed by him could have been granted. In the instant case as seen above, the management was given sufficient and reasonable opportunity to lead fresh evidence to prove the charges of misconduct leveled against the deceased workman and in its attempt to do so, the management as noted above, produced the evidence discussed above, which evidence in the eye of law was not sufficient, legal and competent to prove the charges of misconduct leveled against the first party workman. In the result, it is to be held that the management has failed to prove the charges of misconduct leveled against the deceased workman and therefore, he is entitled to all the benefits including the back wages and continuity of service from the date of his dismissal till the date he expired. Since the workman is no more, the LRs on record shall get all those benefits. Hence the following Award:

AWARD

The management is directed to pay full back wages with continuity of service and all other consequential benefits to the LRs of the deceased workman from the date of his dismissal till 23-10-1999, the date on which he expired. No costs.

A. R. SIDDIQUI, Presiding Officer

नई दिल्ली, 17 अक्टूबर, 2007

का.आ. 3265.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, नई दिल्ली के पंचाट (संदर्भ संख्या 74/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2007 को प्राप्त हुआ था।

[सं. एल-12011/70/2006-आई आर(बी-11)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 17th October, 2007

S.O. 3265.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 74/2006) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the industrial dispute between the management of Allahabad Bank and their workmen, received by the Central Government on 16-10-2007.

[No. L-12011/70/2006-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE**BEFORE SHRI SANT SINGH BAL PRESIDING
OFFICER CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. 1, NEW DELHI**

I.D. No. 74/2006

In the matter of dispute between :

Shr Gopal Krishan
Through the General Secretary,
Allahabad Bank Staff Association,
40/26, North Malaka,
Allahabad-211001

... Workman

Versus

The Regional Manager,
Allahabad Bank, Civil Lines,
Moradabad (U.P.)-244001.

..Management

Appearances : None for the workman.
Shri M.K. Verma A/R for management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12011/70/2006-IR (B-II) dated 15-9-2006 has referred the following industrial dispute to this tribunal for adjudication :—

“Whether the action of the management of Allahabad Bank in imposing the punishment of bringing down to lower stage in scale of pay by one stage vide order dated 16/28-8-2003 on Shri Gopal Krishan Verma, Special Assistant, Nagpur Branch Allahabad Bank Bareilly on the alleged charges of misconduct vide charge dated 13-10-2000 is legal fair and justified? If not, to what relief is the concerned workman entitled?”

2. This reference was received and registered on 28-9-2006 and thereafter notices have been sent for appearance to the parties and for filing claim by the workman on 29-11-06, 1-2-07, 21-2-07, 17-4-07, 11-7-07, 7-8-07 and today 8-10-07 but neither the workman nor his A/R appeared on any of the dates of hearing till day despite notice and several calls since morning. It appears that the workman is not interested in prosecution of this case. Hence No. Dispute Award is passed. File be consigned to record room.

Dated : 8-10-2007

SANT SINGH BAL, Presiding Officer

नई दिल्ली, 17 अक्टूबर, 2007

का.आ. 3266.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ संख्या 19/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-10-2007 को प्राप्त हुआ था।

[सं. एल-12011/222/2002-आई आर (बी-11)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 17th October, 2007

S.O. 3266.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda, and their workmen, received by the Central Government on 12-10-2007.

[No. L-12011/222/2002-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**

Dated, 4th October, 2007

PRESENT**SHRI A.R. SIDDIQUI : Presiding Officer****C.R. No. 19/2003****I Party**

The General Secretary,
BOB Employees Union,
C/o Bank of Baroda,
P.B. No. 2, K.G. Road,
Bangalore-560009

II Party

The Regional Manager,
Bank of Baroda,
Regional Office,
P.B. No. 2619, HJS Chambers,
3rd Floor, Richmond Road,
Bangalore-560025

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-12011/222/2002(IR(B-II) dated 17th March, 2003 for adjudication on the following schedule :

SCHEDULE

“Whether the management of Bank of Baroda is justified by discharging Shri L.G. Byndoor, Sub-staff from services w.e.f. 07-09-2000? If not, what relief the workman is entitled to?”

2. A charge sheet dated 16/18-01-1999 came to be served upon the first party workman in the following terms:

Charge Sheet: It has been reported against you as under :

1. That you have demanded and accepted Rs. 5000/- from one Mr. Ganeshan for arranging power supply to the bore well pump set of the said Ganeshan and thereafter you have neither got the electricity connection nor returned back the amount to Mr. Ganeshan. After Mr. Ganeshan

complained against you to the Bank about this matter, you have threatened him to withdraw the said complaint.

2. That you are in the habit of issuing cheques to various persons without maintaining sufficient balance in your account.
3. That you forced one Mrs. Chandrika Girimaji our valued client to open a pigmy account with Abhishek Finance, Gandhi Bazaar, Shimoga and as per your suggestion the said Girimaji opened an account with Abhishek finance and deposited Rs. 40,000 between the year 1994 and 1997. Thereafter the said company has stopped the collection of money as well as repayment of principal and interest amount resulting in the above Girimaji losing her hard earned money.
4. That you have received Rs.1 lakh from one Mr. Sharangapani, to get his loan sanctioned by the Bank to purchase trailers and thereafter the loan turned out to be bad and unrecoverable.
5. That you have borrowed Rs. 25,000/- from Mr. Manjunath Finance, Shimoga on 01-06-1997 and defaulted in repayment of the same. Thus the said finance company has initiated action against you for the recovery of the loan along with interest by serving legal notice on you.

Your above acts are very serious in nature and amounts to gross misconduct under the provisions of BPS therefore, the bank charges you as under :—

1. Engaging in any trade or business outside the scope of your duties without the written permission of the bank which is a gross misconduct under para 19.5(a) of the BPS.
2. Doing any act prejudicial to the interest of the bank or gross negligence, or negligence involving or likely to involve the bank in serious loss which is a gross misconduct under para 19.5(j) of the BPS.
3. Giving or taking bribe or illegal gratification from the customer of the bank which is a gross misconduct under the provisions of 19.5(j) of the BPS.

It has been therefore, been decided to initiate disciplinary proceedings against you. Mr. S.J. Jathanna, Senior Branch Manager has been appointed as Enquiry Officer, who will enquire on the above charges against you. He will advise you the date, time and place of the enquiry.

You will be permitted to be defended by a representative of a registered trade union of bank employees of which you are a member on the date first notified for commencement of enquiry by Enquiry Officer and if you are not the member of any such trade union, you will be allowed to defend yourself by a representative of the trade

union recognized by our bank on the date, time and place notified for the enquiry.

You will be allowed to produce your evidence to examine witnesses in your defence and to cross examine the witnesses brought by the bank against you in this enquiry.

“Please note that the enquiry be proceeded in your absence if you do not appear at the appointed date, time and place of enquiry.”

3. His reply in denying the charges not being found satisfactory by the Disciplinary Authority, a DE was conducted against him and on the basis of the enquiry findings holding him guilty of the aforesaid charges No. 1 and 2 (Charge No. 3 not proved) he was discharged from service.

4. The first party by his claim Statement challenged the enquiry proceedings as opposed to the principles of natural justice, the enquiry findings as suffering from perversity and the impugned punishment order as unjust and illegal. Based upon the respective pleadings of the parties with regard to the validity and fairness or otherwise of the enquiry proceedings, this Tribunal on 22-12-2004 framed the following preliminary issue :

“Whether the Domestic Enquiry conducted against the first party by the second party is fair and proper?”

5. After due trial of the said issue, this Tribunal by order dated 20-4-2007 recorded a finding to the effect that the DE held against the first party by the second party is fair and proper. Thereupon, I have heard the learned counsels for the respective parties on merits of the case i.e. on the point as to whether the enquiry findings suffered from perversity and if so, the impugned punishment order passed against the first party was legal and justified and that the punishment of discharge was commensurate to the charges of misconduct proved against the first party.

6. Learned counsel for the first party, Shri Muralidhar by way of his written as well as oral arguments vehemently, contended that the enquiry findings suffered from perversity for two reasons. Firstly, for the reason that none of the allegations/charges made against the first party in the first instance, constitute the misconduct as defined under Para 19.5(a) or 19.5(j) of the Bipartite Settlement. His next contention was that the evidence of the three alleged independent witnesses namely, MW1 to MW3, as such, does not prove any misconduct to have been committed by the first party in the light of their statements as well as the complaints made against the first party by MW1 & MW3. Coming to the first allegation that the first party demanded and accepted Rs. 5000/- from MW3. Mr. Ganeshan for arranging power supply to his bore well pump set and thereafter he neither paid back the said amount nor got his work done. Learned counsel argued that the said Ganeshan was not a customer of the bank as on the date the said transaction is said to have been taken place and further the alleged transaction of getting KEB power being a private transaction between the first party and said

Ganeshan, it is nothing to do with the bank or by no stretch of imagination it can be said to be a transaction involving trade or business having any connection with the discipline of the bank so as to consider the said act of the first party as a misconduct under para 19.5(a) or 19.50(j) of the BPS.

7. Coming to the 2nd Allegation that the first party without maintaining sufficient funds issued number of cheques in favour of the parties and thereupon stopped payment in respect of certain cheques and other cheques came to be dishonoured on account of insufficient funds, learned counsel for the first party submitted that the first party issued those cheques as a customer of the bank operating Saving Bank Account and therefore, he should be considered as a customer only and his acts in issuing the cheques and thereafter stopping the payment or cheque being dishonoured cannot be again construed as a misconduct within the ambit of the aforesaid paras of the Bipartite Settlement.

8. Coming to the third allegation that he forced one Smt. Chandrika Girimaji, MW2 to open a pigmy account with Abishek Finances and as per his suggestion she opened the account depositing Rs. 40,000/- between the year 1994 and 1997 and that thereafter she lost her hard earned money at the said corporation did not collect money or repay the principal amount or interest to her, learned counsel submitted that it is again a transaction of private in nature and only because the first party advised the said lady to open the account with the said corporation and thereafter did not cooperate with her in getting back the amount she deposited with the said finance corporation, in no way, can be said to be a misconduct in the aforesaid clauses of the BPS particularly, when it is not proved that the first party by way of the abovesaid act had put to any financial benefit or that he acted as a Pigmy agent for the said corporation. He contended that only because the brother of the first party happened to be the pigmy agent to the said corporation, it cannot be said that the first party was responsible for the loss or any inconvenience caused to the said lady in opening the amount with the corporation under his advise.

9. Coming to the last allegation that he borrowed a sum of Rs. 25,000/- from Mr. Manjunath Finance, Shimoga on 01-06-1997 and defaulted in repayment of the same and that the said finance company issued a legal notice against him for recovery of the said amount, learned counsel submitted that it is again a transaction in between the first party and the said finance in his private capacity, in no way effecting the interest of the bank or causing any financial loss to the bank or that his abovesaid act was in any way prejudicial to the interest of the bank. Learned counsel in support of his arguments relied upon the following four decisions :

1. 1963(1) LLJ page 684
2. AIR 1974 SC page 1629
3. 1972 1 LLJ page 1 SC
4. 2000-1-LLJ page 495 SC

10. As far as the findings of the Enquiry Officer are concerned, learned counsel submitted that those findings

once again being based upon the very statement of the allegations made in the charge sheet and the testimony of MW1 to MW3 recorded during the course of enquiry speaking to the abovesaid undisputed facts cannot be said to be the evidence sufficient and legal in order to substantiate the charges of misconduct levelled against the first party. He submitted that in the very complaint filed by MW2 namely, Mrs. Chandrika Girimaji, what she stated was that the first party did not cooperate with her in getting back her money from the said finance corporation. Therefore, this act of the first party in not cooperating with the lady for which he was not legally bound or was supposed to be under any obligation cannot be said to be a misconduct in the aforesaid clauses of the Bipartite Settlement. He contended that as far as the witness Shri Ganeshan, MW3 is concerned his statement as well as the complaint is just to speak that he had paid a sum of Rs. 5000/- to the first party to get KEB connection to his Bore Well Pump Set but he failed to do so and that he also did not repay the amount, on its face itself, cannot be construed as a misconduct, it being a private transaction between the first party and the said Shri Ganeshan.

11. Whereas, learned counsel for the management while supporting the findings of the enquiry officer argued that the fact that the first party took a sum of Rs. 5000/- from Mr. Ganeshan and did not oblige him in getting his work done and the fact that he advised the said lady to open her account with the aforesaid corporation will tell the tale upon the fact that he was engaged in trade and business without the permission of the bank and, therefore, he committed the misconduct as alleged. With regard to the issuing of the cheques, learned counsel submitted that the fact that the first party issued cheques involving a sum of more than Rs. 3 lakhs, while earning a meagre salary, must again reflect to the fact that those transactions involving the amount under the cheques again pertained to his activities in dealing with trade and business without the permission of the bank. As far as the last allegation against the first party, that he borrowed a sum of Rs. 25,000/- from the above said finance resulting into a legal notice to be issued against him for the recovery of the same, he contended that it was again an act of misconduct bringing disrepute to the image of the bank in which he was working. Learned counsel with regard to the issuance of the cheques wanted to say that the dishonouring of the cheques gives right to the party concerned to file a complaint with the magistrate for an offence under Section 138(a) of the Negotiable Instruments Act and therefore, this being an offence involving moral turpitude, the first party cannot escape the liability and that this act of the first party again tantamounts to the subversive of the discipline as contemplated under the above clauses of the BPS. In this respect he cited a ruling reported in 1997(1) LLJ SC page 854. He contended that it is not necessary that other misconducts committed by the first party should have caused financial loss and for that he relied upon decisions reported in 1999 SC 1994 and 2002-1-LLJ page 156 Bombay High Court. The other two decisions cited on behalf of the management are not relevant for the purpose.

12. After, having gone through the records, the evidence brought out during the course of enquiry, the findings of the enquiry officer and taking into consideration the other facts and circumstances of the case, I find substance in the arguments advanced for the first party. First of all I find, substance in his arguments that the various allegations made against the first party in the charge sheet do not constitute the misconduct as defined under the aforesaid paras of the Bipartite Settlement. They are at the most appear to be the statement of the facts and nothing more. Coming to the first allegation against the first party that he took a sum of Rs.5000 from Mr. Ganeshan and failed to oblige him by getting KEB connection and also failed to pay back the said amount to him, it was rightly argued for the first party that first of all the said Ganeshan was neither an employee of the bank nor was a customer of the bank as on the date he made the complaint. Moreover, the alleged transaction of getting KEB power is nothing more than a private transaction between the first party and Mr. Ganeshan to which the bank has nothing to do. There is no evidence produced or it is not the case of the management that the first party is undertaking such things as an activity of trade or business. There is also no case made out by the management as to in what way the bank was affected by the aforesaid transaction in between the first party and a 3rd party. Therefore, assuming for a moment, the first party demanded a sum of Rs.5000 from Shri Ganeshan and failed to oblige him, that act by itself, will not constitute any misconduct unless that was shown to be an act committed by the first party along with other acts being undertaken by him as a trade or business. This isolated act of the first party promising somebody for getting his work done even if, it is against some consideration cannot be said to be an act involving any moral turpitude or causing any financial loss to the bank much less committing an act of indiscipline. Now coming to the second allegation against the first party that he went on issuing various cheques, some of which were dishonoured and against some of which he stopped payment, it was again rightly argued for the first party that there being no specific clause or para under the Bipartite Settlement or any circular produced by the management to the effect that such an act of its official will constitute misconduct, first party having issued such cheques cannot be held responsible for any misconduct under the above said two paras. He was right in contending that the first party having his saving bank account with the management bank must be considered as a customer and he shall be dealt with as the other customers will be dealt with by the bank. He was again right in contending that the mere dishonouring of certain cheques ipso- facto will not amount to have committed any offence as such. The offence under Section 138(a) of the Negotiable Instrument Act, will arise only if the party concerned moves to the court and it is after due trial of the case the offence is proved or established. He contended that merely because those cheques are dishonoured, nobody can jump to the conclusion that the first party committed an offence under Section 138 of the said Act, particularly, when there was no complaint as such either with the court concerned or with the bank itself, with regard to the dishonouring of the

cheques or with regard to the stopping of the payment. Therefore, learned counsel was right in contending that the bank cannot proceed against the first party even if, he happened to be its customer and issued such cheques against the parties, as it was for the parties concerned, to take suitable action under the relevant provisions of law and not the bank. Now, coming to the allegation that he forced the said Smt. Chandrika to open an account with Abhishek Finance, once again there is substance in the arguments advanced for the first party that even assuming for a moment that he advised the said lady to open an account, it cannot be said that the first party had any mala fide intention in doing so or that by the above said act he indulged in trade or business getting any monetary benefit thereof or that by his above said action the management bank was put to any loss financially or by way of reputation. The management has framed this charge against the first party on the ground that the brother of the first party being a Pigmy Agent to the said Finance, the first party might have got some financial interest in getting clients to the said finance so that his brother can earn profit and he also can get some benefits out of it. If we go by the very allegations made in the complaint, it can be very well seen that there are no such allegations made by the complainant against the first party, nothing was attributed to him by way of mala fides or by way of fraud committed by him. What the recitals of the complaint say that the lady wanted the first party to cooperate with her in getting back her money from the said finance. Therefore, only because the first party did not cooperate with her, he cannot be saddled with the liability of causing any financial loss to the said lady or to say that he was indulging in some trade or business by getting clients to the said finance for some ulterior motive. As argued for the first party there is no nexus or connection between the bank and the said act of first party particularly, when there is no case of the management, that the first party himself, acted as a pigmy agent for the said finance or that he canvassed for it. Likewise, the last allegation against the first party that he borrowed a sum of Rs.25,000/- from a finance and defaulted its repayment resulting into an action against him for the recovery of the loan amount by issuing a legal notice, it is not understandable as to how this act of the first party done in his private capacity getting certain loan from some finance corporation amounts to misconduct under the aforesaid clauses of the Bipartite Settlement. He might have borrowed certain amounts from certain corporation and might have failed to repay the same making himself liable for their action that does not mean to say that it was an act of misconduct committed by him against the bank to which transaction the bank had absolutely no nexus or connection. Moreover, merely because some legal notice was issued to the first party, it cannot be said that the fact of default as such has been established or that in defaulting the repayment there was any crime or offence committed by the first party. It was well argued for the first party that this allegation against the first party at the most amounts to a statement of fact and nothing beyond that. The aforesaid arguments advanced for the first party that the allegations against him that he demanded or received a sum of Rs. 5000 from Mr. Ganeshan or that he forced the above

lady to open an account with the said finance or that he borrowed a sum of Rs.25000 from the said finance will amount to be private transaction between the first party and the aforesaid parties, get support from the principle laid down by their Lordship of SC reported in 1963 I LLJ Page 684- Agnani Vs. Badri Das & Others and the principle laid down in the decision reported in AIR 1974 SC Page 1629- Management of M/s. :Indian Express & Chronical. Press VS.MC Kapur. The principle laid down by their Lordship of Supreme Court in the aforesaid decision reported in 1997(1) LLJ SC page 854 cited on behalf of the management in my humble opinion are not applicable to the facts of the present case. What was observed in the decision was that the word 'Offence' occurring in Clause 19.3(a) has been defined in clause 19.2 to mean any offence involving moral turpitude for which an employee is liable to conviction and sentence under any provision of law. Here in the instant case we are not confronted with any charge of misconduct so to say a charge against the first party for having committed any offence as such as undisputedly there was no complaint by the party concerned filed before the court under Section 138(a) of the Negotiable Instrument Act, much less, any offence under the said provision being committed by the first party. The principle laid down in the other decisions cited on behalf of the management once again in my humble opinion are not applicable to the facts of the present case. There may be cases where the delinquent will not be causing any financial loss to the bank yet his act may constitute a misconduct but in the instant case when the misconduct itself, has not been proved or misconduct cannot be construed on the face of the allegations made in the charge sheet itself, question of first party causing or not causing any financial loss to the bank does not arise. Therefore, for the reasons narrated above, I am of the considered view that charges as they stand rather the allegations as they are made in the charge sheet issued to the first party do not constitute any misconduct coming under the ambit of paras 19.5(a)&(J) of the BPS.

13. Now coming to the findings of the enquiry officer. The learned enquiry officer, what he has done is that he has simply acted upon the oral testimony of MW1 to MW3 and without giving sufficient reasonings as to how the first party can be said to be indulged in trade or business without the permission of the bank committed the misconduct alleged against him. As noted above, going a step further and assuming for a moment that the allegations made by the complainants, MW2 & 3 are true on their case, they cannot constitute a misconduct as defined under the above said two paras. With regard to the allegation that the first party made the above lady to open her account with the said finance, the learned enquiry officer wants to say that there is a probability that the commission collected by the brother of the first party may be for the benefit of the first party and that the first party did not disprove the said fact. Therefore, as could be seen, the learned enquiry officer is shifting the burden upon the first party to disprove the said fact rather than, asking the management to prove the said fact. While dealing with the charge that he received the amount of Rs.5000/- from Mr. Ganeshan, learned enquiry

officer once again gives a very strange reasoning by saying that said Mr. Ganeshan being a dissatisfied person there is a probability of damage of the image of the bank and also probability of loosing business of said Shri Ganeshan. He did not dispute the fact that Mr. Ganeshan himself was not the customer of the bank at the relevant point of time. Therefore, the reasonings given by the learned enquiry officer taking the first and second charges as proved against the first party again in my opinion are not convincing and cogent and much less based upon the evidence brought on record. He based his reasonings on surmises and conjectures. In the result findings given by him must be held to be suffering from perversity and in the result they are liable to be quashed. The natural corollary therefore, would be that the impugned punishment order passed against the first party based on those findings is illegal and void abinitio. In the result, it goes without saying that the first party is entitled to the relief of reinstatement.

14. Now, coming to the question of back wages. There is no evidence produced by the management to suggest that the first party has been gainfully employed when he was out of the service of the management. On the other hand the first party himself has examined before this tribunal and deposed to the effect that he has not been gainfully employed after he was discharged from service. He further stated that after having suffered heart attack in the month of October, 2000 he had undergone bypass surgery at Narayana Hrudayalaya, Bangalore and had taken the treatment at various hospitals as per the documents marked at EX.W1 series. He stated that he took loan from his friends and relatives for the purpose of his treatment. In his cross examination he denied the suggestion that he has created the documents at EX.W1 series and that he has been gainfully employed. It was elicited from him that he made an attempt to seek employment at Shimoga after about two and a half years of undergoing his Bypass Surgery but could not get the job. Therefore, having regard to the above said statement of the first party and the fact that there is no evidence contrary to that on behalf of the management, it will not be safe for this tribunal to come to the conclusion that the first party has been gainfully employed when he was away from the services of the management. In the result, there will be no justification for this tribunal to deny full back wages from the date of impugned punishment order till the date of his reinstatement along with continuity of service and all other consequential benefits. Hence the following award :

AWARD

The management is directed to reinstate the first party into its services with full back wages from the date of impugned punishment order till the date of his reinstatement with continuity of service and all other consequential benefits. No costs.

(Dictated to PA transcribed by her corrected and signed by me on 4th October, 2007)

A.R. SIDDIQUI, Presiding Officer

नई दिल्ली, 17 अक्टूबर, 2007

का.आ. 3267.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बॉम्बे ओरियन्टल को. बैंक लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, अहमदाबाद के पंचाट (संदर्भ संख्या 36/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-10-2007 को प्राप्त हुआ था।

[सं. एल-12012/252/2005-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 17th October, 2007

S.O. 3267.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 36/2006) of Central Government Industrial Tribunal-Cum-Labour Court, Ahmedabad. as shown in the Annexure in the industrial dispute between the management of Bombay Mercantile Cooperative Bank Ltd., and their workman, received by the Central Government on 17-10-2007.

[No. L-12012/252/2005-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
AT AHMEDABAD

PRESENT

A. A. LAD

In Charge/Presiding Officer, Mumbai

Reference (C.G.I.T.A) NO. 36/2006

The Asstt. General Manager
Bombay Mercantile Cooperative Bank Ltd.
Khanpur
Ahmedabad (Gujarat)

First Party

Their Workman

Shri Mohammad Yunus
Vali Mohammad Mansuri
Rahemat Manzil Beldarwad,
Bahai Centre,
Shahpur,
Ahmedabad-380 001

Second Party

APPEARANCES:

For the Employer : Shri Nilesh M. Shah
(Advocate)

For the Workman : Shri Pankaj Mashar
(Advocate)

Ahmedabad dated 10th September, 2007

AWARD

1. The matrix of the facts as called out from the reference are as under :—The Government of India, Ministry of Labour and Employment by its Order No. L-12012/252/2005 (IR) (B-I) dated 17-03-2006 in exercise of the powers conferred by clause (d) of sub section (1) and sub-section 2(A) of Section 10 of the Industrial Dispute Act, 1947 have referred the following dispute to this Tribunal for adjudication :

SCHEDULE

“Whether the action of the management of Bombay Mercantile Cooperative Bank Ltd., by awarding the punishment of dismissal from services to Shri Mohamad Yunus Vali Mohammad Mansuri from the post of Cashier-cum-Clerk from its Relief Road Branch, Ahmedabad with effect from 10-02-2005 is legal and justified? If not, what relief the workman is entitled to and to what extent?”

2. Second party served a notice at Ex. 2 and appeared as per Ex. 3. He filed claim statement at Ex. 6.

3. However, by Ex. 7 he appeared with a purshis stating that, he do not want to proceed with the reference. Hence the order.

ORDER

In view of Ex. 7 reference is disposed off for want of prosecution.

Date: 10-09-07
Ahmedabad.

A.A. LAD, Presiding Officer

नई दिल्ली, 17 अक्टूबर, 2007

का.आ. 3268.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, भुवनेश्वर के पंचाट (संदर्भ संख्या 14/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-10-2007 को प्राप्त हुआ था।

[सं. एल-22012/21/2000-आई आर(सी-11)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 17th October, 2007

S.O. 3268.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2000) of the Central Government Industrial Tribunal-Cum-Labour Court, Bhubaneswar as shown in the Annexure in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workman, which was received by the Central Government on 17-10-2007.

[No. L-22012/21/2000-IR (C-11)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
BHUBANESWAR****PRESENT:**

Shri N.K.R. Mohapatra,
Presiding Officer, C.G.I.T-Cum-Labour Court,
Bhubaneswar.

Industrial Dispute Case No. 14/2000

Date of Passing Award—14th September, 2007

BETWEEN:

The Management of the District Manager,
Food Corporation of India, At./Po. Titilagarh,
Dist. Bolangir, Orissa.

... 1st Party-Management.

And

Their Workman, Smt. Mina Sand, Sweeperess, FCI,
Modern Rice Mill, Dunguripalli, Bolangir, Orissa

... 2nd Party-Workman.

APPEARANCES:

M/s. N.K. Mohapatra, ... For the 1st Party-
Advocate. Management.

M/s. D. Mohapatra, ... For the 2nd Party-
Advocate. Union

AWARD

The Government of India in the Ministry of Labour, in exercise of powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. L-22012/21/2000/IR (CM-II), dated 31-07-2000/8-8-2000:—

“Whether the action of the Management of Food Corporation of India in terminating the services of Smt. Mina Sand after rendering 12 years continuous service is justified? If not, to what relief the disputant is entitled?”

2. The case of the workman as set out in her Claim Statement is that she was engaged as a Sweeperess-cum-Scavenger by the Management on 1-3-1978 to sweep and clean its Food Storage Depot earlier known as Modern Rice Mill at Dunguripalli in the District of Baragarh, Orissa. Initially she was paid Rs. 15/- per month and thereafter @ Rs. 25/- per month from 1-8-78 to 31-5-1985 and then @ Rs. 6.50 per day from 1-6-1985 to 31-3-1989 and then @ Rs. 10/- per day from 1-4-1989 till she was terminated on 17-3-1999. Question the above termination she raised an Industrial Dispute before the A.L.C. (C) contending that when she was sincerely and regularly rendering service since about 21 years the Management should have regularized her instead of terminating her from service. In the claim petition it is accordingly prayed for regularization with full back wages, the payments already received by her not being equal to the minimum wages prescribed by the Government. Hence the reference.

3. The Management on the other contends that since there was no sanctioned post of a sweeper the workman was engaged on part time basis to sweep the office room and its varendha and for upkeep of a toilet on fixed charge basis and the above engagement being for less than an hour per day, she was not entitled for regularization. It is further contended that as per the recruitment rules a person capable of reading and writing any language is only to be appointed on direct recruitment basis but not otherwise and therefore the workman, an illiterate person, was also not otherwise eligible to be regularized. As regards the reasons of terminating the workman it is further contended that since she was paid from office contingency to work for less than an hour her further engagement was felt not necessary and hence terminated. In nutshell it is pleaded that the claim of the workman is not justified.

4. On the basis of the above pleadings of the parties the following issues were framed.

ISSUES

1. Whether the reference is maintainable?
2. Whether the action of the Management in terminating the services of Smt. Mina Sand after rendering 12 years continuous service is justified?
3. If not to what relief the workman is entitled to?

5. To prove her case the workman has examined herself besides the Secretary of a Union as W.W. 1 and 2 respectively. She has also produced several documents marked as Ext.-1 to 9, 9/1 and 10. The Management on the other has examined its Area Manager (M.W. 1) and marked as Ext. A, a portion of its recruitment Rules relating to recruitment of sweeper.

FINDINGS**ISSUE NO. 1**

6. As stated earlier the workman has challenged the action of the Management as illegal and this she has made while claiming for her regularization. In the claim statement there is no whisper that the termination of the workman was in violation of Section 25-F of the Industrial Disputes Act. The terms of reference is also found totally silent on such aspect in as much it does not contain the date of alleged termination. Besides though according to both parties the workman was engaged for 21 years prior to her termination, the reference has reduced the said period to 12 years. Thus the non-mentioning of the date of termination in the reference clearly suggest that the intention of the Government in making such reference is not to examine the propriety/legality of the termination but to examine whether the Management has committed any illegality by not regularizing the workman despite her long standing service rendered to it. It is the settled principle that in order to keep a reference outside the purview of judicial review the Government should carefully formulate the points of dispute; they should also be so worded as to avoid ambiguity or prejudice to any of the parties to the dispute. It has been held in various judicial pronouncement that non-mentioning the date of termination or where a reference is not specific and otherwise ambiguous the same would renders the reference invalid and inoperative. The reference in question being one such case, the same prima-facie appears not

maintainable. As two distinct disputes not connected with the other can take the form of a single dispute under section 10 of the Industrial Disputes Act the reference in question can not be answered on two distinct aspects, one on the point of regularization and the other on the point of illegal termination. However when both the parties have mostly confined their pleading to the regularization aspect, treating the reference to be a valid one, I proceed hereunder to answer the said question as an alternative approach to the reference.

ISSUE No. II & III

7. These issues are taken up together as they are interdependent.

Ext.-4 is the office order dated 20-8-1978 on the basis of which the workman was engaged on remuneration of Rs. 15/- per month for supply of drinking water and for sweeping of office. Ext.-6 is an official letter dated 9-11-1990 recommending payment of bonus. Ext.-9 and 9/1 are the official statements showing payments made to the workman during 1978 to March 1999. Ext.-10 is an official statement of 1986 indicating the details of casual workers/ daily rated workers engaged as on 2-8-1986. These documents and the evidence adduced by both parties indicate with certainty that the workman was engaged from year to year and month to month during the period from 1978 till March 1999. Documents like Ext.6, 9 and 9/1 and the claim statement filed by the workman indicates further that initially the workman was paid Rs. 15/- per month and then @ Rs. 25/- and then Rs. 6.50 per day and again @ Rs. 10/- per day till termination in March 1993. The complaint (Ext.-2) made to the A. L.C. (C) by the workman and her representation Ext.-3 and 8 made to the Management show that the payment she used to receive was much below the minimum wage prescribed by the Government. The unchallenged evidence of the Management shows that the workman used to work less than an hour daily for sweeping the office and other work like cleaning the toilet of the office. The further evidence of the Management shows that the office establishment in question was not that big requiring full time engagement of a person for sweeping of the office and cleaning a sole toilet. The letter of termination Ext.-1 indicates that she was engaged as a part time worker. In this circumstance it can not infact be believed that the workman could have been engaged as full time worker as claimed by her.

8. Now with the afore-stated background is to be seen whether the Management has committed any illegality is not regularizing her service when she was engaged continuously from 1978 to 1999.

9. The evidence on record shows that there was no sanction post of a Sweeper for which she was engaged on part time basis. Further Ext.-A the relevant portion of the Management's recruitment Rules indicates that to be appointed as sweeper one should have the knowledge of reading and writing any language and such posts are only to be filled up by direct recruitment. In her evidence the workman has admitted that except putting her signature she does not know reading and writing. In these circumstances it can not be said that the workman could

have been regularized considering her prolonged association with the Management. It may be pointed out that where recruitment is the rule, a person engaged/ appointed otherwise can not claim regularization nor he/ she can be regularized ignoring such rule howsoever long he/she must have served under the Management. It is the settled law that in the matter of regularization no court has the jurisdiction to direct for regularization of casual, temporary daily or part time workers. In the case of Secretary, State of Karnataka and Others—Versus—Umadevi & Others, a five Judges Bench of Hon'ble Supreme Court, reported in 2006(3) Supreme Today 415, have taken a similar view that a person engaged as casual/temporary/adhoc basis has no right to claim lien over a permanent post when such post are to be filled up by direct recruit as per the Rules prescribed. Therefore, in these premises the action of the Management in not regularizing the service of the workman can neither be held bad nor the Management can be directed to regularize the service of the workman, a part time worker.

10. Even considering the reference from a different angle it appears that the same is not maintainable. As stated earlier, while making a reference the Government must take necessary care to project the real dispute and such reference should be worded carefully as to avoid judicial review. In the present case the reference received from the Government is found to be cryptic and unspecific in as much as the same does not convey the real intention of the Government. At the very outset it gives an impression as if the Tribunal has been asked to examine the legality of the termination order but no date of termination has been mentioned rendering the reference on that aspect bad. The other intention of the Government, which can be derived from the wordings of the reference is perhaps one to examine the aspect of the regularization of the workman. But since a reference for regularization of an employee is only possible during subsistence of relation between employer and employee but not otherwise after the termination of such employee, the reference also appears otherwise not maintainable the same having been made after the termination of the workman.

11. In view of the various discussions made in the foregoing paras it is held either way that the workman is not entitled for any relief both on facts and law. For the self same reason the action of the Management is held to be beyond reproach.

12. The reference is answered accordingly.

Dictated & Corrected by me.

N. K. R. MOHAPATRA, Presiding Officer

LIST OF WITNESSES EXAMINED ON BEHALF OF THE WORKMAN

Workman Witness No. 1- Smt. Mina Sandh.

Workman Witness No.2 - Sarat Chandra Malla.

LIST OF WITNESSES EXAMINED ON BEHALF OF THE MANAGEMENT

Management Witness No. I - Nihar Ranjan Pradhan.

LIST OF EXHIBITS ON BEHALF OF THE 2nd PARTY WORKMAN

Ext.-1 - Termination Notice dated 17-3-1999.

Ext.-2- Representation of the disputant dated 15-5-1994 to the A.L.C.C. Bhubaneswar.

Ext.-3 - Representation of the disputant to the Regional Manager, F.C.I., Bhubaneswar.

Ext.-4 - Office Order dated 20-8-1978 of the Management of F.C.I., Durguripali.

Ext.-5 - Date of Birth Certificate of the disputant.

Ext.-6 - Letter dated 9-11-1990 addressed to the district Manager, FCI, Titilagarh showing particulars of payments made to the disputants.

Ext.-7 - Copy of letter No. 561, dated 22-11-1991 of Shri P.C. Mishra.

Ext. -8 - Representation of the disputant dated 18-1-1996 to the Regional Manager, R.C.I., Bhubaneswar.

Ext.-9 - Copy of the statement of payment indicating the engagement of the workman during the period from March 1978 to March 1999.

Ext.-9/I- Copy of the Statement of payment indicating the engagement of workman during the period from March 1978 to March 1999.

Ext.-10 - Copy of the Statement indicating engagement of the workman.

LIST OF EXHIBITS ON BEHALF OF THE 1st PARTY MANAGEMENT

Ext.-A - Copy of the recruitment Rules, 1971 of the Food Corporation of India.

नई दिल्ली, 17 अक्टूबर, 2007

का.आ. 3269.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण भुवनेश्वर के पंचाट (संदर्भ संख्या सं. 3/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-10-2007 को प्राप्त हुआ था।

[सं. एल-22012/20/2000-आईआर(सी-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 17th October, 2007

S.O. 3269.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 3/2000) of the Central Government Industrial Tribunal-Cum-Labour Court, Bhubaneswar as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Food Corporation of India and their workman, which was received by the Central Government on 17-10-2007.

[No. L-22012/20/2000-IR(C-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present :

Shri N.K.R. Mohapatra,
Presiding Officer,
C.G.I.T.-cum-Labour Court,
Bhubaneswar.

INDUSTRIAL DISPUTE CASE No. 3/2000

Date of Passing Award-14th September, 2007

Between :

The Management of the Dist. Manager,
Food Corporation of India,
At./Po. Titilagarh,
Dist. Bolangir, Orissa.
...1st Party-Management.

And

Their Workman,
Smt. Golapi Machhakhand,
Near Goru Bazar,
Barakhulipara,
At./Po. Titilagarh,
Bolangir, Orissa.
...2nd Party-Workman.

Appearances :

M/s. N.K. Mohapatra.	... For the 1 st Party
Advocate.	Management.
M/s. D. Mohapatra,	... For the 2nd Party
Advocate.	Workman.

A W A R D

The Government of India in the Ministry of Labour, in exercise of Powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No.L- 22012/20/ 2000/IR (CM-II), dated 31-07-2000/8-8-2000:

“Whether the action of the Management of Food Corporation of India by terminating the services of Smt. Golapi Machhakhand after rendering 12 years continuous service is justified? If now, what relief the disputant is entitled to?”

2. It is alleged by the workman that after the death of her mother who was working as a Sweeper she was engaged in her place in the establishment of the Management at Titilagarh, Dist. Bolangir with effect from 17-4-1986 on fixed monthly remuneration. Few years of her appointment she made some representations to the Management and other authorities for her regularization. But when she was terminated on 17-3-1999 (about 13 years after her continuous service) she raised an Industrial Disputes before the Asst. Labour Commissioner (Central), which culminated in the present reference. Challenging the above action of the Management as illegal the workman in her claim statement has claimed for her regularization with full back wages from the date of such supposed regularization.

3. Admitting that the workman was engaged on 17-4-1986 and terminated on 17-3-1999 the Management has alleged that the above engagement being part time on contractual basis, she was terminated as per the prohibition order issued by the Regional Office. The Head Quarters Office no doubt issued a circular EP-1(4)/85-Vol.II dated 6-5-1987 (in relaxation of the recruitment rules) for entry level posts to regularize those of the workers who had completed three months of service as on 2-5-1986 subject to their possessing necessary qualification as prescribed under the recruitment Rules, but this circular being in respect of casual/daily rated workers doing the job of a regular employee and the workman not being one such workers and her engagement being part time and contractual in nature, she could not be regularized and as such her present claim is also not entertainable.

4. On the basis of the above pleadings of the parties the following issues were framed.

ISSUES

1. Whether the reference is maintainable?
2. Whether the action of the Management in terminating the services of Smt. Golapi Machakhand after rendering 12 years continuous service is justified?
3. If not, what relief the workman is entitled to?

5. The workman besides examining herself has examined the then office bearer of the Union. She has also produced documents marked as Ext.-1 and 2. On the other hand the Management has examined its Area Manager besides producing a relevant portion of the recruitment Rules. marked as Ext. -A.

FINDINGS

ISSUE NO.1

6. As stated earlier the workman has challenged the action of the Management as illegal and this she has made while claiming for her regularization. In the claim statement there is no whisper that the termination of the workman was in violation of Section 25-F of the Industrial Disputes Act. The terms of reference is also found totally silent on such aspect in as much as it does not contain the alleged date of termination. Besides though according to both parties the workman was engaged for 13 years prior to her termination, the reference has reduced the said period to 12 years. Thus the non-mentioning of the date of termination in the reference clearly suggests that the intention of the Government in making such reference is not to examine the propriety/legality of the termination but to examine whether the Management has committed any illegality by not regularizing the workman despite her long standing service rendered to it. It is the settled principle that in order to keep a reference outside the purview of judicial review the Government should carefully formulate the points of dispute; they should also be so worded as to avoid ambiguity or prejudice to any of the parties to the dispute. It has been held in various judicial pronouncement that non-mentioning the date of termination or where a reference is not specific and otherwise ambiguous, the same

would render the reference invalid and inoperative. The reference in question being one such case, the same prima-facie appears not maintainable. As two distinct disputes not connected with the other can take the form of a single dispute under section 10 of the Industrial Disputes Act, the reference in question can not be answered on two distinct aspects, one on the point of regularization and the other on the point of illegal termination. However when both the parties have mostly confined their pleading to the regularization aspect, treating the reference to be a valid one, I proceed hereunder to answer the said question as the only alternative approach to the reference.

ISSUE NO. II & III

7. These issues are taken up together as they are interdependent. There is no dispute to the fact that the workman was engaged on 17-4-1986 and 13 years later she was terminated on 17-3-1999 without regularization. Through its witness (M.W.I) it has been claimed by the Management that the carpet area of the office where the workman was engaged was only 2000 Sq.ft having two toilets and therefore she was engaged on contractual basis on fixed remuneration, the work of sweeping and cleaning of the toilets being of half an hour job. But the said evidence of the M.W.-I is found to be contrary both to the pleadings of the Management and the narration of the official document marked Ext.-2. This Ext.-2 contains a list of casual labourers/daily labourers engaged as on 2-5-1986. It shows that while four other persons were engaged as Messenger and Sweeper on daily rate basis on no-work no pay basis, the workman was engaged as a Scavenger on minimum basic pay of Rs. 225 per month of a regular post from April 1987 in place of her deceased mother. Therefore in these premises it is held with certainty that the workman was engaged as casual labourer on full time basis from April 1987 till she was terminated on 17-3-1999 vide termination order marked Ext.-1 as otherwise she would not have been paid such a huge amount as compared to the wages paid to other four daily labourers.

8. Now with the above proved facts it is to be seen how far the Management was justified in terminating the workman without regularization. The Management Witness has admitted during cross examination that, the workman was cleaning the toilets besides sweeping the floor of the office. There is evidence that the Management had eight residential quarters. allotted to its officer. The recruitment Rule (Ext.-A) prescribes that the post of a Sweeper is to be filled up by direct recruitment and to be appointed as Sweeper one must be capable of reading and writing any language. The counter filed by the Management shows that in relaxation of the above criteria one circular was issued vide EP-1(4)/85-Vol.II dated 6-5-1987 to regularize those of the casual workers who had completed three months of service as on 2-5-1986. The above circular has neither been filed by the workman nor by the Management to enable the Tribunal to go through its full text. Similarly the evidence of the parties also does not disclose whether the qualifying date 2-5-1986 was subsequently extended from time to time or not. Therefore, in these circumstances it can not be said that the said circular was in force by the time the workman was terminated. On the other hand, going

by the circular and the cut-off date mentioned therein, it can not be said that the Management was guilty of not regularizing the workman like other when the evidence of the workman discloses that, by the time the above circular came into being, she had not acquired the minimum 3 months experience as required under the circular. It may be pointed out that where recruitment is the rule, a person engaged/appointed otherwise can not claim regularization nor he/she can be regularized ignoring such rule howsoever long he/she must have served under the Management. It is the settled law that in the matter of regularization no court has the jurisdiction to direct for regularization of casual, temporary daily or part time workers. In the case of Secretary, State of Karnataka and Others -Versus- Umadevi & Other a five Judge Bench of Hon'ble Supreme Court reported in 2006 (3) Supreme Today 415 have taken a similar view that a person engaged as casual/temporary/adhoc basis has no right to claim lien over a permanent post when such post are to be filled up by direct recruit as per the Rules prescribed. Therefore, in these premises the action of the Management is not regularizing the service of the workman can neither be held bad nor the Management can be directed to regularize the service of the workman.

9. Even considering the reference from a different angle it appears that the same is not maintainable. As stated earlier, while making a reference the Government must take necessary care to project the real dispute and such reference should be worded carefully as to avoid judicial review. In the present case the reference received from the Government is found to be cryptic and unspecific in as much as the same does not convey the real intention of the Government. At the very outset it gives an impression as if the Tribunal has been asked to examine the legality of the termination order but no date of termination has been mentioned rendering the reference on that aspect bad. The other intention of the Government, which can be derived from the wordings of the reference is perhaps one to examine the aspect of regularization of the workman. But since a reference for regularization of an employee is only possible during subsistence of relation between employer and employee but not otherwise after the termination of such employee, the reference also appears otherwise not maintainable the same having been made after the termination of the workman.

10. In view of the various discussions made in the foregoing paras it is held either way that the workman is not entitled for any relief both on facts and law. For the self same reason the action of the Management is held to be beyond reproach.

11. The reference is answered accordingly.

Dicatted & Corrected by me.

N. K. R. MOHAPATRA, Presiding Officer

LIST OF WITNESSES EXAMINED ON BEHALF OF THE WORKMAN

Workman Witness No. 1- Smt. Golapi Machhakund.

Workman Witness No.2 - Sarat Chandra Malla.

LIST OF WITNESSES EXAMINED ON BEHALF OF THE MANAGEMENT

Management Witness No.1 - Nihar Ranjan Pradhan.

LIST OF EXHIBITS ON BEHALF OF THE 2ND PARTY WORKMAN

Ext.-1. - Copy of the Termination Letter.
Ext.-A-Copy of the statement showing payments to the workman.

LIST OF EXHIBITS ON BEHALF OF THE 1ST PARTYS MANAGEMENT

Ext.-A - Copy of the Regulation prescribing the qualification of Employees.

नई दिल्ली, 17 अक्टूबर, 2007

का.आ. 3270.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बोम्बे मर्कन्टाईल को. बैंक लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अहमदाबाद के पंचाट (संदर्भ संख्या 07/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-10-2007 को प्राप्त हुआ था।

[सं. एल-12012/119/2006-आई आर (बी-1)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 17th October, 2007

S.O. 3270.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 07/2007) of Central Government Industrial Tribunal-Cum-Labour Court, Ahmedabad. as shown in the Annexure, in the industrial dispute between the management of Bombay Mercantile Cooperative Bank Ltd., and their workmen, received by the Central Government on 17-10-2007.

[No. L-12012/119/2006-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT AHMEDABAD

Present

A. A. LAD

In Charge/Presiding Officer, Mumbai

REFERENCE (C.G.I.T.A) No. 7/2007

The Asstt. General Manager
Bombay Mercantile Cooperative Bank Ltd.

Khanpur Ahmedabad
Ahmedabad (Gujarat)

First Party

Their Workman

Shri Moiz Mustakali Tinwala,
D-2 Adil Apartment Khiskolas Pole,
Kalupur Ahmedabad-380001
Ahmedabad-380001

Second Party

APPEARANCES :

For the Employer : (Absent)
 For the Workman : Shri Pankaj Mashar
 (Advocate)

Ahmedabad dated 10th September, 2007

AWARD

1. The matrix of the facts as called out from the reference are as under :—

The Government of India, Ministry of Labour and Employment by its Order No. L-12012/119/2006-IR (B-1) dated 14-12-2006 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication :—

SCHEDULE

“Whether the action of the management of Bombay Mercantile Cooperative Bank Ltd., by awarding the punishment of dismissal from services to Shri Moiz Mustakali Tinwala from the post of Clerk from its Relief Road Branch, Ahmedabad with effect from 28-2-2005 is legal and justified? If not, what relief the workman is entitled to and to what extent?”

2. Notice served on second party of the reference by Ex. 2. By Exs. 4 and 5 he reported in the reference.

3. By Ex. 5 he express that, he do not want to proceed with the reference. Hence the order :

ORDER

As per Ex. 5 this reference is disposed off for want of prosecution.

A. A. LAD, Presiding Officer

नई दिल्ली, 19 अक्टूबर, 2007

का.आ. 3271.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ने एसोसिएटेड सिमेन्ट कम्पनीज लि., बर्धा के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय भुवनेश्वर, के पंचाट (संदर्भ संख्या आई.डी.सं. 33/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-10-2007 को प्राप्त हुआ था।

[सं. एल-29011/36/2005-आई आर (एम)]

एन. एस. बोरा, डेस्क अधिकारी

New Delhi, the 19th October, 2007

S.O. 3271.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. ID. No. 33/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Associated Cement Companies Ltd., Bargarh and their workman, which was received by the Central Government on 19-10-2007.

[F. No. L-29011/36/2005-IR(M)]

N. S. BORA, Desk Officer

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL
 TRIBUNAL-CUM-LABOUR COURT,
 BHUBANESWAR**

INDUSTRIAL DISPUTE CASE NO. 33/2005

Date of Passing Award - 21st September, 2007

PRESENT:

Shri N.K.R. Mohapatra,

Presiding Officer, C.G.I.T.-cum-Labour Court,
 Bhubaneswar.

BETWEEN

The Management of the Managing Director,
 M/s. Associated Cement Companies Limited,
 Bargarh Cement Works, Cement Nagar,
 P.O. Bardol, Orissa, Bargarh - 768 038

... 1st Party-Management

AND

Their Workmen, represented through the
 President, Hira Cement Shramik Sangh,
 Cement Nagar, P.O. Bardol, Orissa,
 Bargarh - 768 038

...2nd Party-Union.

APPEARANCES

M/s. G.G. Govil

Advocate

None

... For the 1st Party Management.

...For the 2nd Party Union

AWARD

1. The Government of India in the Ministry of Labour, in exercise of Powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No.L-29011/36/2005-IR (M), dated 17-11-2005.

“Whether the action of the Management of M/s. Bargarh Cement Limited, Bargarh in not paying the Additional Allowance of Rs. 215 per month to the employees of M/s. Bargarh Cement Limited, a subsidiary of M/s. ACC Ltd., prior to settlement, dated 26-4-2005 basing on which the same was excluded vide Clause-2 of the Memorandum of Settlement signed by the Cement Manufacturing Association and Cement Workmen represented by INCWF (INTUC), ABCMS (BMS), HMS, AICWF(AINTUC) and CITU before the Chief Labour Commissioner (Central) on 26-4-2005 is justified? If not what relief the workmen are entitled to?”

2. From the pleadings of the parties it appears that earlier I.D.C. of Orissa was the holding company of IDCOL Cement Limited at Bargarh. The A.C.C. Cement through a share purchase agreement purchased the shares held by I.D.C. in 2003 and named IDCOL Cement Limited as Bargarh Cement Limited and after amalgamation of both companies it has presently been renamed as A.C.C.—Bargarh Cement Works Limited. Therefore, the name Bargarh Cement

Limited as appearing in the letter of reference has been substituted with its present name A.C.C.—Bargarh Cement vide order No. 3, dated 9-3-2006. Hence wherever the word “Bargarh Cement Limited” appears either in any document or otherwise, it should be read as A.C.C.—Bargarh Cement Works and the IDCOL Cement as earst-while Management.

3. It appears from the claim statement of the 2nd Party-Union that the earst while Management prior to its taken over by the A.C.C. Management used to have unit wise settlement at par with the settlement of Cement Manufacturers Association (C.M.A.) with different Federations (which is otherwise known as National settlement). Accordingly there was a Tripartite Settlement with the earstwhile Management on 7-1-2002 to provide a package benefits of Rs. 1250 per month to the workers with effect from 1-10-2001 to 30-9-2004 on counts like Basic pay, Conveyance Allowance, Education Allowance, L.T.A. and periodical Allowance in a phased manner @ Rs. 800 per month with effect from 1-10-2001 to 30-9-2004, @ Rs. 200 with effect from 1-10-2002 to 31-3-2004 and @ Rs. 250 with effect from 1-4-2004 to 30-9-2004 (Total Rs. 1250 per month). The earst while IDCOL Cement of which L.D.C. was the holding company was taken over by A.C.C.-Management on 22-12-2003. On 23-9-2004 the 2nd Party-Union presented a Charter of Demand for revision of wages etc. and it was then agreed between the parties through a Tripartite settlement that they would adopt the National Coal Wage Settlement (N.C.W.S) on its coming into force from 1-4-2005 between the C.M.A. and the Federations.

4. While above was the situation, the C.M.A and five number of Federations including INTUC entered into an interim-Tripartite Settlement on 7-1-2005 (Ext.-H) agreeing to provide Rs. 215 per month to the workers with effect from 1-4-2004 with a stipulation that the same would be included in the package of benefits under the eventual settlement effective from 1-4-2005. The eventual settlement between C.M.A. and the Federations came in the form of National Settlement on 24-6-2005 with a package benefits of Rs. 1550 with effect from 1-4-2005 (Ext.-J) with a limiting clause No. 2 in the following terms. “The total amount of Rs. 1550 is inclusive of Rs. 215 included as Additional Allowance with effect from 1-4-2005 as per the Memorandum of Settlement reached before the Joint Chief Commissioner of Labour (Central) New Delhi on 7-1-2005. However the additional allowance is not payable by A.C.C. Limited and its subsidiaries as it has already been paid.”

5. After the above National Settlement when the A.C.C. Management decided to pay deducting Rs. 215 to the workers of the Bargarh Cement Works, the Union raised an Industrial Dispute stating that when Rs. 215 was not paid to the workers as per the interim settlement dated 7-1-2005 where there was justification for the Management to deduct the said amount from the package benefit of Rs. 1550. Thus the reference.

6. The shortly case of the Management as narrated in its length written statement is that the 2nd Party's Tripartite Settlement date 7-1-2002 with the earst-while Management for package payment of Rs. 1250 being in force by the time it was taken over by the A.C.C. Management in 2003, the later had agreed to provide the

self same benefits to the workers up till 30-9-2004, which on its expiry was allowed to continue until another Tripartite Settlement was reached on the basis of Charter of Demands dated 23-9-2004 of the 2nd Party-Union. It is alleged that while considering the said Charter of Demands it was agreed by the parties to adopt/accept the National Settlement (eventual settlement) between the C.M.A. and the Federations. On 7-1-2005 the C.M.A. and the Federation entered into a Tripartite Settlement vide Ext.-H to provide interim benefits of Rs. 215 with effect from 1-4-2004 to 31-3-2005. As by then the other units of the A.C.C.—Management were getting Rs. 1200 and the workers of Bargarh Cement Works @ Rs. 1250 per month which was higher than the previous National Settlement, the A.C.C.-Management intimated the C.M.A. not to negotiate on its behalf. The 2nd Party-Union also did not authorize its Federation to negotiate on its behalf even though another Union named Dunguri Lime Stone Quarry Mazdoor Union representing the workers of the Captive Mines known as Dunguri Lime Stone Quarry could participate through its Federation. Therefore, when neither the 2nd Party-Union representing the workers of Bargarh Cement Works Limited nor the A.C.C.-Management were parties to such interim settlement dated 7-1-2005 (Ext.-H), the workers of the Bargarh Cement Works were not entitled for the interim relief of Rs. 215 and therefore as per Clause-2 of the Final Settlement dated 26-4-2005 (Ext.-J) (which has been extracted earlier) they were denied of such benefits at the time of implementation of the final settlement (National Settlement) dated 26-4-2005 (Ext.-J).

7. The record shows that after filing of Written Statement by the Management the 2nd Party-Union filed a re-joinder to his Claim Statement but in the later stage it did not like to participate in the hearing for which he was set exparte on 2-4-2007. As a consequence thereof the Management alone examined one of its officers (M.W.-I) in support of its stand besides producing several documents marked as Ext.-A to Ext.-L.

FINDINGS

8. The pleading as well as the evidence of M.W.-I shows that earlier I.D.C. of Orissa Limited was the holding company IDCOL Cement Limited at Bargarh. On the basis of share purchase Agreement the A.C.C. Limited took over the shares of IDCOL Limited held by I.D.C. on 22-12-2003 and renamed it as Bargarh Cement Limited with effect from 22-1-2004 and then as A.C.C.—Bargarh Cement Works (as the name stands today). Admittedly there was a tripartite settlement between the earst-while Management and the 2nd Party-Union on 7-1-2002 where under a package benefit of Rs. 1250 were agreed to be given to the workers with effect from 1-10-2001 to 30-9-2004. It is also admitted that subsequently on 22-12-2003 the earst-while company was taken over by A.C.C. naming it as Bargarh Cement Limited which has now been further changed to A.C.C.-Bargarh Cement Works (the Management). It is also admitted by the parties that while the above Tripartite Settlement dated 7-1-2002 was about to expire, the 2nd Party-Union gave a Charter of Demands to the A.C.C.—Management on 23-9-2004 for revision of wages whereupon a Tripartite Agreement was entered into agreeing to adopt the eventual

National Settlement effective from 1-4-2005. It is also admitted that the so-called eventual settlement came in the form of a National Settlement between the Cement Manufacturers Association (C.M.A.) and five Federations including INTUC on 26-4-2005 vide Ext. J. It is also admitted by both the parties that prior to the above final settlement one interim tripartite settlement was inked on 7-1-2005 between the (C.M.A.) and the Federation offering an interim benefit of Rs. 215 to the workers with effect from 1-4-2004 to 31-3-2005. It is contended by the Management Witness that at the time of such interim settlement the A.C.C.—Management had expressed its intention to the C.M.A. not to bargain on its behalf. Equally the 2nd Party-Union had also not authorized any of the Federation to plead on its behalf during such interim settlement and therefore the workers of Bargarh Cement Works represented through 2nd Party-Union are not entitled to claim the said benefits of Rs. 215, both the Union and the A.C.C. Management not being the consenting parties to such interim settlement, as per Clause-2 of the Final National Settlement dated 26-4-2005 (Ext-J) which reads as follows:

"The total amount of Rs. 1550 is inclusive of Rs. 215 included as Additional Allowance with effect from 1-4-2005 as per the Memorandum of Settlement reached before the Joint Chief Commissioner of Labour (Central) New Delhi on 7-1-2005. However, the additional allowance is not payable by A.C.C. Limited and its subsidiaries as it has already been paid"

9. Ext-F, a letter dated 6-4-2004 of the Management shows that by that letter the C.M.A. was requested to exclude A.C.C. from any wage settlement to be reached between C.M.A. and other Central Labour Organizations. After this letter an interim settlement was reached between C.M.A. and Federation on 7-1-2005 (Ext-H) declaring interim relief of Rs. 215 per month as allowance with a stipulation that the same would be included in the package of benefits under eventual settlement effective from 1-4-2005. Another letter dated 20-4-2005 (which is on record) of the A.C.C. Management shows that while the eventual settlement was yet to be reached, the above letter was addressed to the C.M.A. authorizing it to represent A.C.C. Limited in the fourth-coming National Level Wage Settlement-2005 to be signed by C.M.A. with the Federations of Union. The National Settlement which was reached on 26-4-2005 (Ext-J) indicates that the settlement reached thereunder is not applicable to those of the companies who had not authorized C.M.A. to represent them in the discussion. A list has been enclosed to such settlement under Annexure-1 indicating different companies to which such settlement is applicable and it contains the name of Bargarh Cement Limited, the earlier name of the present A.C.C.-Bargarh Cement works. It is perhaps because of that a special reference has been made to the A.C.C. Limited in clause-2 of the final settlement (Ext-J). A close reading of the said clause shows that the package benefit of Rs. 1550 as agreed by the parties is inclusive of the 1 additional benefit of Rs. 215 payable under the interim settlement dated 7-1-2005 (Ext.-H). A special reference to A.C.C. Limited and its subsidiary companies not to pay such Rs. 215 seems to have been made on their submission that the same has

already been paid to its workers. But since no such amount has admittedly been paid to the workers of the Bargarh Cement, they are entitled to avail the full benefits of Rs. 1550 as per the earlier settlement dated 7-1-2002 between the A.C.C. Management and the 2nd Party-Union.

10. It has been admitted by the Management that the workers of the above Bargarh Cement Limited are presently getting Rs. 1250 as per the earlier unit-wise settlement with the earst-while Management. Therefore they are declared entitle to get the differential amount between their existing benefit and the benefit of Rs. 1550 as decided in the settlement dated 26-4-2005 (Ext.-J), be that amount to Rs. 215 per month or not, with effect from 1-4-2004 as per their earlier settlement dated 7-1-2002.

11. The reference is accordingly answered exparte against the 2nd Party-Union.

Dictated & Corrected by me.

N.K.R. MOHAPATRA, Presiding Officer

नई दिल्ली, 19 अक्टूबर, 2007

का.आ. 3272.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. हिन्दुस्तान मार्बल प्रा. लि. बनासकंठा के प्रबंधन के संबद्ध निवासियों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या सीजीआईटीए सं.-36/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-10-2007 को प्राप्त हुआ था।

[सं. एल-29011/42/2006-आईआर(एम)]

एन. एस. बोरा, डेस्क अधिकारी

New Delhi, the 19th October, 2007

S.O. 3272.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. GITA No. 36/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad now as shown in the Annexure in the industrial dispute between the employers in relation to the management of M/s. Hindustan Marble Pvt. Ltd. Banaskantha and their workman, which was received by the Central Government on 19-10-2007.

[No. L-29011/42/2006-IR(M)]

N. S. BORA, Desk Officer

**ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
AT AHMEDABAD
PRESENT**

A.A.LAD
Incharge/Presiding Officer, Mumbai
Reference (C.G.I.T.A.) No. 36/2006
M/s. Hindustan Marble Private Limited
Village Jetwa Nr. GIDC Estate,
Ambaji Tal Data
Banaskantha-385110

First Party

Their Workman
 Shri Basura Natha
 C/o General Secretary
 Near Railway Bridge Palanpur (B.K.)
 Palanpur (B.K.) ... Second Party

Appearances

For the Employer (Absent)
 For the Workman (Absent)

Ahmedabad the 11th September, 2007

AWARD

1. The matrix of the facts as called out from the reference are as under :—The Government of India, Ministry of Labour and Employment by its Order No. L-29011/42/2006-IR (M)) dated 17-01-2007 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication.

SCHEDULE

“Whether the action of the management of M/s. Hindustan Marbles Private Limited Ambaji in terminating the services of Shri Basura Natha, Helper with effect from 14-01-2004 without following the provisions of the ID Act is legal and justified? If not, what relief the workman concerned is entitled to?”

2. A notice was send to the parties concerned by registered post of the reference. Then this Tribunal received intimation from the Ministry of Labour and Employment Government of India dated 13-04-2007, where it was informed that, settlement took place before RLC (C) Ahmedabad on 28-3-2007.

3. In view of settlement took place before RLC (C) Ahmedabad dated 28-3-2007, no point remain to decide the subject matter of the reference. Hence the order.

ORDER

In view of settlement took place before R.L.C. (C) Ahmedabad dated 28-3-2007 which is submitted by Ministry of Labour and Employment Govt. of India, New Delhi by letter dated 13-4-2007, this reference is disposed off for want of prosecution.

A.A. LAD, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2007

का.आ. 3273.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-2 नई दिल्ली के पंचाट (संदर्भ संख्या 41/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2007 को प्राप्त हुआ था।

[सं. एल-40012/7/2005-आईआर(डी.यू.)]
 सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 22nd October, 2007

S.O. 3273.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 41/2005) of the Central Government Industrial Tribunal-cum-Labour Court, No. II, New Delhi as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 22-10-2007.

[No. L-40012/7/2005-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT-II

NEW DELHI

PRESIDING OFFICER: R.N. RAI

I.D.No. 41/2005

IN THE MATTER OF:

Shri Mahinder Singh,

S/o Shri Biru Ram, Village Raipur Jattan, Distt. Karnal (Haryana).

VERSUS

The General Manager (Telephone) BSNL

Distt: Karnal (Haryana).

AWARD

The Ministry of Labour by its letter No. L-40012/7/2005-IR(DU) Central Government Dt. 12-5-2005 has referred the following point for adjudication.

The point runs as hereunder :—

“Whether the action of the management of BSNL in terminating the services of Shri Mahinder Singh S/o Shri Biru Ram, Safai Karamchari w.e.f. 2001 is just and legal? If not to what relief the workman is entitled to?”

The workman applicant is filed claim statement. In the claim statement it has been stated that the workman was appointed by the management on the post of Safai Karamchari and was posted in Raipur Jattan Telephone Exchange Distt. Karnal, Haryana, and as such working till his termination in June, 2001.

That the workman was employed on daily rated basis as Safai Karamchair from 1-4-1993 and has worked as such regularly without taking any leave etc. and even worked on Sundays/Gazetted holidays and worked as extra telephone helper and for this extra Rs. 121 per month was sanctioned for the part time job. It is submitted that the workman has worked continuously for more than 240 days in the year 1993 and worked for more than 240 days in the year 1994 and has worked for more than 240 days in each year till 1st June, 2001 when his services were terminated by way of refusal to permit him to join his duties in 2001. It is very much necessary to mention here that when his

services were terminated he has already worked continuously under the management more than 240 days during a period of twelve calendar months preceding the date i.e. 1st June, 2001 and has actually worked under the present management.

That the workman has served the management continuously from 1-4-1993 to 1-6-2001 i.e. eight year approximately and in each year worked more than 240 days but in the year i.e. 2001 the telephone exchange of Raipur Jattan was transferred to Gagsina, Distt. Karnal (Haryana), at a distance of 2 KM from the Raipur Jattan as the same has been converted in electronic exchange and all the staff of Raipur Jattan joined at Gagsina Exchange but the workman was not allowed to join his duties at Gagsina Exchange. It is submitted that Shri Ram Kumar foreman had refused the workman to join his duties on 1-6-2001 and told the workman that his services are terminated. It was further told that one lady Safai Karamchhari was employed in the place of workman as she was well known to the said foreman Ram Kumar.

That the workman has worked at the outmost satisfaction of management and there is not a single complaint against the workman. The workman was never charge sheeted or any memorandum or notice was given to him nor any retrenchment notice/pay/amount was given in lieu of retrenchment.

That Junior to workman are working on the post which was held by workman and management has illegally and arbitrarily terminated the services of the workman without any reason and dispute, various requests and visits up to 15-1-2003 was not allowed to resume his duties.

That workman by hand given three demand notices with request for employment on 15-1-2003, 20-2-2003 and 28-2-2003, but in vain, and after that workman raised Industrial Disputes and a reference has been submitted to this Hon'ble Court for adjudication. That the action of the management is illegal, unjust, arbitrary and against the labour laws.

That the termination of workman is liable to be set aside as the workman is unemployed since his termination despite best efforts. The management has filed written. In the written statement it has been stated that the reference for the present proceeding is bad in law in as much as the Claimant is not a workman of the Management within the definition of the "Workman" under Section 2(s) of the Industrial Disputes Act, 1947. The appropriate Government has not applied its mind while referring the alleged dispute for adjudication to this Hon'ble Tribunal under Section 10 of the Industrial Dispute Act, 1947, therefore the reference made by the appropriate Government is bad in law.

That the dispute raised by the Claimant herein has become redundant in view of the recent judgment of the Hon'ble Constitution Bench of the Hon'ble Supreme Court of India vide judgment dated 10-4-2006 in Appeal (Civil) No. 3595-3612 of 1999 in the matter titled, Secretary, State of Karnataka and others Versus Umadevi and others along with CIVIL APPEAL NO. 1861-2063/2001, 3849/2001, 3520-3524/2002 and CIVIL APPEAL NO. 1968 OF 2006 whereby the Hon'ble Supreme Court of India has been pleased to

lay down that: "In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the Union or of the State Government cannot but be recognized and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of the public employment. Nor can a court say that the Union or the State Government do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed. Once this right of the Governments do not have the right to engage persons in various capacities for a duration or until the work in particular project is completed. Once this right of the Government is recognized and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the Constitutional scheme."

That the Claimant was neither engaged nor recruited by the management nor is he a members of service nor any appointment letter was issued, nor the management terminated his services. Hence, the claimant has no locus standi to raise any industrial dispute and, therefore, also the reference made by the appropriate Govt. is bad in law.

That the statement of claim and reference are not maintainable in as much as the same are not accompanied by an Order/ Letter of alleged termination on the basis of which the claimant has tried to raise this frivolous Industrial Dispute. That there exists no employer employee relationship between the claimant and the management and therefore no Industrial Dispute is maintainable between them.

It is specifically denied that the claimant was ever appointed by the management on the posts of Safai Karamchhari or has ever been posted in Raipur Jattan Telephone Exchange Distt. Karnal, Haryana or was working till his alleged termination in June, 2001. He is called upon to produce the letter of appointment. The claimant has also failed to produce any such proof of employment even before the Conciliation Officer. And without substantiating even the basic relationship of employer-employee, the present reference has been made mechanically without any application of mind. It would be noteworthy to mention herein that the said petty works of the department are being carried out on contract basis. Therefore, a petty contractor can neither by any stretch of imagination nor under position of law be an employee of the Management department.

It is specifically denied that the alleged workman was either employed on daily rated basis as Safai Karamchari from 1-4-1993 or has worked regularly without taking any leave etc. or worked on Sundays/Gazetted Holidays or has ever worked as an extra telephone helper or that any amount as alleged was sanctioned for the part time job. It is further wrong to allege herein that the alleged workman has either worked continuously more than 240 days in the year 1993 or has worked for more than 240 days in the year 1994 or that he has worked for more than 240 days in each year till 1st June, 2001 or that his services were terminated by way of refusal to permit him to join his duties in 2001. It is further wrong to allege that his services were at all terminated or that he had already worked continuously under the management for more than 240 days during a period of twelve calendar months preceding the date 1st June, 2001 as alleged to have worked under the management.

It is however submitted herein that the said claimant was actually a sweeper in the Telephone Exchange, Raipur Jattan working in small building consisting of two rooms, one veranda & one toilet and the sweeping work of about one hour had been entrusted to him on contract basis and the payments were made to him @ Rs. 121/per month as per the sanction of expenditure issued by T.D.M. Karnal vide Memo No. GA-41/SDOT/KRL/37 dated at Karnal 21-12-1993. It would be pertinent to mention herein that in the said Sanction of Expenditure it was not to be treated as a sanction of part time sweeper. It is reiterated that since the claimant herein was only a petty contractor and not a workman, the question of termination of his services does not arise. It is further reiterated that the claimant was entrusted only with petty work of a sweeper on contract basis and payments were made to him accordingly. It would be pertinent to mention herein that all the employees recruited in the Management department as per the recruitment rules are paid off their respective salaries on acquaintances rolls (Salary register) whereas the payment to the claimant has been made on simple receipt for the works carried out by him. It would be important to reiterate that the claimant herein had neither ever been recruited as per the recruitment rules nor any appointment letter had ever been issued to him nor had he been governed under the Civil Services Rules nor any attendance was required to be marked by him in the attendance register as it is done by the other regular Government employees.

It is misconceived to allege herein either that the workman has ever served the management continuously from 1-4-1993 to 1-6-2001 eight year approximately or in each year has worked for more than 240 days or that the workman was not allowed to join his duties at Gagsina Exchange. However, in this context it would be relevant to mention herein that the said Telephone Exchange was closed on 11-1-2001 and as such no sweeping work was required to be done by any person. It is further misconceived to allege herein that any person by name of Shri Ramkumar, foreman refused the alleged workman to join his duties on 1-6-2001 or to allege that he ever told the

workman that his services were terminated. It would be pertinent to mention herein that a foreman is not the competent appointing authority and as such he is not authorized to terminate services whatsoever. It is further misconceived to allege that any lady Safai Karamchari was employed in the place of workman or that she was allegedly known to the said foreman Shri Ram Kumar. The claimant is put to strict proof of the same.

In view of the above paras it is misconceived to allege herein either that the junior to the workman are working on the post which was held by the workman or that the management has ever illegally or arbitrarily terminated the services of the workman without any reason or dispute or that on any request or visit upto 15-1-2003 he was not allowed to resume or that on any request or visit upto 15-1-2003 he was not allowed to resume any of his duty. The claimant is put to strict proof of the alleged averment in the para under reply.

The workman applicant has filed rejoinder. In the rejoinder he has reiterated the averments of his claim statement & has denied most of the paras of the written statement. The management has also denied most of the paras of the claim statement.

Evidence of both the parties has been taken.

Heard arguments from both the sides & perused the papers on the record.

It was submitted from the side of the workman that the workman was employed on daily rated basis as Safai Karamchari from 1-4-1993 and has worked as such regularly without taking any leave etc. and even worked on Sundays/Gazetted holidays and worked as extra telephone helper and for this extra Rs. 121 per month was sanctioned for the part time job. It is submitted that workman has worked continuously for more than 240 days in the year 1993 and worked more than 240 days in the year 1994 and has worked for more than 240 days in each year till 1st June, 2001 when his services were terminated by way of refusal to permit him to join his duties in 2001. It is very much necessary to mention here that when his services were terminated he has already worked continuously under the management more than 240 days during a period of twelve calendar months preceding the date i.e. 1st June, 2001 and has actually worked under the present management.

It was further submitted that Sh. Ram Kumar, Foreman refused the workman to join his duties on 1-6-2001 and one Lady Safai Karamchari was employed in place of the workman as she was well known to the said Foreman, Sh. Ram Kumar.

It was further submitted that the workman has worked continuously from 1993 to 2001 and he has worked for 240 days every year. He has not been paid one month's pay in lieu of notice and retrenchment compensation. The termination is arbitrary and illegal.

- It was submitted from the side of the mgt. that the workman was not employed on daily wages basis as Safai Karamchhari. He was engaged for sweeping the premises and cleaning the toilet of two rooms and one toilet for one hour daily. An expenditure of Rs. 121 pm was sanctioned as expenditure for sweeping and cleaning the two rooms and toilet.

It was further submitted that the Telephone Exchange was closed on 11.01.2001 as such no sweeping work was required to be done by any persons. The Foreman is not competent authority to terminate the services of the workman. No lady employee for sweeping work was engaged in the other Telephone Exchange where office was shifted. There is no evidence regarding the same from the side of the workman.

The workman has filed certificate issued by the SDO, Karnal. It has been mentioned in this certificate that the workman has been engaged on part-time after sanction of TDM, Karnal of Rs. 121 in Raipur Jattan Telephone Exchange. The workman has further filed photocopy of certificate in which it has been written that the workman was working on daily wages basis till the Telephone Exchange of Raipur Jatan was closed.

The workman has admitted In his cross-examination that he worked only as Safai Karamchhari and nothing else. He used to get Rs. 121 pm as his salary. He has further admitted that the Raipur Jattan Exchange was working for 7 years from the date of his appointment. The Exchange constitutes of two rooms, one Verandah, one toilet and open courtyard both the sides. He has further admitted that his termination is due to the closure of Raipur Jatan Exchange and he has also admitted that he came to know of Gajsinia Exchange and it was told to me by the Lineman, Sh. Ram Dev. Thus, it is admitted case of both the parties that there were two rooms and one toilet in the Raipur Telephone Exchange. The workman worked there for 7 years. It is also true that he got Rs. 121 pm as his salary as he has admitted it clearly in its cross-examination that he used to get Rs. 121 pm as his salary. No other payment has been made to him. It is also admitted that his engagement was discontinued when the Exchange shifted from Raipur to Gajsinia Exchange.

The management has filed sanction order in which it has been specifically stated that the amount of Rs. 121 has been sanctioned as expenditure for cleaning and sweeping the Raipur Jattan Exchange which comprises of two rooms and one toilet. The workman was doing Safai work of two rooms and one toilet. He was doing no other work. He has stated in his claim that he worked for the whole day from 8:30 AM to 4:30 PM. This statement of the workman is not believable. No workman will work for the whole day on Rs. 121 in 2000-2001. This is not the wage of even a part time employee. The workman was engaged for cleaning the premises comprising of two rooms and one toilet and he obtained sanctioned expenditure of Rs. 121 PM. Two rooms and one toilet can be cleaned in an hour or half an hour. The workman could not even maintain his family on Rs. 121pm. So he was allowed the work of cleaning two

rooms and one toilet and he was paid Rs. 121 for that purpose. That workman cannot be said to be a part-time work. The minimum wages for such part-time work in 2000-2001 was more than Rs. 600.

The workman has not been engaged as part-time Safai Karamchhari. The mgt. has sanctioned Rs. 121 pm as expenses of safai and the workman has been paid the same. His engagement was dis-continued when the Raipur Jattan Exchange was closed in 2001.

The mgt. sanctioned expenditure of Rs. 121 for sweeping work on 21.12.1993 and it runs as under:

“Sanction at TDM, Karnal is hereby accorded for making the expenditure for sweeping work for Raipur Jattan under SDOT, Karnal on monthly basis @ Rs. 121 (One Hundred & Twenty One Only). It is merely a sanction of expenditure and may not be treated as a sanction of part-time sweeper.”

It has been specifically mentioned that sweeping work was given to the workman not as part-time sweeper but only the expenses for sweeping has been sanctioned by the management. The workman has been engaged after sanction and no one can go beyond the sanction.

Mention of part-time in the certificate carries no meaning in view of the specific order in the sanctioned letter. It has been even mentioned in the certificate that the workman was working as part-time against sanctioned expenditure of Rs. 121 pm. It has been clearly mentioned in the sanctioned order that there is sanction of expenditure and it should not be treated as sanction of part-time sweeper. The simple thing is that the management sanctioned Rs. 121 pm for getting the premises cleaned and swept and the workman did that and received the expenditure. In view of the area of the premises no management will engage a part-time sweeper. The workman in the circumstances cannot be said to be a part-time sweeper.

In the circumstances it cannot be said that the workman was entitled for retrenchment compensation and one month's pay in lieu of notice. He was engaged for safai work and Rs. 121 was paid to him by way of expenditure. There is no employment in such circumstances and it cannot be said to be continuous work in view of section 25 - F of the I. D. Act, 1947.

The reference is replied thus : —

The action of the management of BSNL in terminating the services of Shri Mahinder Singh S/o Shri Biru Ram, Safai Karamchhari w.e.f. 2001 is just and legal. The workman applicant is not entitled to get any relief as prayed for.

The award is given accordingly.

Dated : 17-10-2007

R. N. RA1, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2007

का.आ. 3274.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नार्थन रेलवे बीकानेर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, बीकानेर के पंचाट (संदर्भ संख्या 04/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2007 को प्राप्त हुआ था।

[सं. एल-41012/220/1995-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 22nd October, 2007

S.O. 3274 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 04/1997) of Industrial Tribunal-cum-Labour Court, Bikaner as shown in the Annexure, in the industrial dispute between the management of Northern Railway Bikaner, and their workmen, received by the Central Government on 22-10-2007.

[No. L-41012/220/1995-IR (B-I)]

AJAY KUMAR, Desk Officer

अनुबन्ध

औद्योगिक विवाद अधिकरण, बीकानेर :

पीठासीन अधिकारी : डॉ. वीरेन्द्र कुमार माथुर, आर.एच.जे.एस.

न.मु. केन्द्रीय औद्योगिक विवाद प्रसंग सं. 4 सन् 1997

राजकुमार पुत्र श्री मोहनलाल विरूद्ध	मण्डल रेल प्रबन्धक,
जाति सैनी, निवासी वार्ड	उत्तरी रेलवे, बीकानेर
नं. 1, गायत्रीनगर, जूनागढ़	राजस्थान वर्तमान-मण्डल
चुरा, राजस्थान—प्रार्थी/श्रमिक	रेलवे प्रबंधक.
	उत्तर-पश्चिम
	रेलवे बीकानेर, राजस्थान
	—अप्रार्थी/नियोजक

प्रसंग अर्न्तगत धारा 10 (1) (घ) औद्योगिक विवाद अधिनियम, 1947

उपस्थिति:-

1. श्री अरविन्द सिंह सेंगर, श्रमिक प्रतिनिधि, प्रार्थी पक्ष के लिए
2. श्री ओमप्रकाश भादानी, अधिवक्ता, अप्रार्थी नियोजक पक्ष के लिए

“अधिनिर्णय”

दिनांक 25 अगस्त, 2007

भारत सरकार के श्रम मंत्रालय, नई दिल्ली द्वारा “औद्योगिक विवाद अधिनियम, 1947 जिसे आगे चलकर केवल अधिनियम कहा जायेगा की धारा 10 की उपधारा 1 के खण्ड घ के आधीन जारी आदेश सं. एल-41012/220/95-आई.आर. (बी-11) दिनांक 19-12-96 द्वारा श्रमिक राजकुमार की सेवासमाप्ति से सम्बन्धित विवाद केन्द्रीय औद्योगिक न्यायाधिकरण, नई दिल्ली को अधिनिर्णयार्थ भेजा था, तदुपरान्त भारत सरकार के श्रम मंत्रालय के समसंख्यक आदेश दिनांक 23-5-1997

द्वारा अधिनिर्णयार्थ इस न्यायाधिकरण में स्थानान्तरित किया है। न्यायाधिकरण के समक्ष प्रेषित औद्योगिक विवाद प्रसंग निम्न प्रकार है—

“Whether the action of the management of N. Rly, Divisional Rly. Manager, Bikaner in not giving the preference to Shri Raj Kumar in accordance with Sec. 25-H of the I. D. Act during re-employment is just fair and legal if not, what relief he is entitled to and from what date?”

2. प्रसंग न्यायालय में प्राप्त होने पर प्रकरण दर्ज रजिस्टर किया गया, पक्षकारों द्वारा अपने-अपने लिखित अभिवचन पेश किये गये हैं अर्थात् प्रार्थी श्रमिक राज कुमार की ओर से प्रस्तुत क्लेम विवरण का जवाब अप्रार्थी नियोजक पक्ष द्वारा दिया गया है।

3. संक्षेप में, प्रकरण के तथ्य इस प्रकार हैं कि प्रार्थी श्रमिक राज कुमार जिसे आगे चलकर केवल प्रार्थी श्रमिक कहा गया है के द्वारा इस आशय के साथ अपना क्लेम विवरण पेश किया गया है कि वह उत्तर रेलवे में अप्रार्थी नियोजक के अधीन रेल पथ निरीक्षक (2) उत्तर रेलवे, हिसार के नियंत्रण में दिनांक 15-4-84 को केजवल लेबर दैनिक वेतन भोगी श्रमिक नियुक्त हुआ था और अपनी नियुक्ति तिथि से सेवा पृथक की तिथि 4-9-84 तक लगातार कार्यरत श्रमिक नियोजित रहते हुए अपनी ड्यूटी एवम् कार्य का अंजाम पूर्ण लगन व कर्तव्य निष्ठापूर्वक अदा करता रहा तथा उसका कार्य पूर्णतया संतोषप्रद रहा है। आगे यह भी अंकित किया गया कि प्रार्थी माध्यमिक शिक्षा उत्तीर्ण रहते हुए अपने पद की समस्त योग्यता धारित करते हुए रेलवे बोर्ड रेल मंत्रालय, नई दिल्ली के पत्रांक 30-5-88, 8-6-88 व 24-3-93 तथा 15-12-93 के अनुसार प्रार्थी जैसे कार्यरत श्रमिकों की सूची लाईव रजिस्टर नियोजक द्वारा तैयार किया जिसके तहत प्रार्थी श्रमिक भी पुनः नियोजित होने का विधिक हकदार रहा, प्रार्थी श्रमिक के साथ के कार्यरत श्रमिक सर्वश्री चेताराम, नरेश कुमार, ओमप्रकाश, अवतार सिंह, महेश कुमार जिनकी कार्याविधि भी प्रार्थी से कम रही है को नियोजक द्वारा पुनः नियोजित कर काम पर बनाये रखा एवम् नियमित सेवा प्रदान की गई जबकि प्रार्थी को बिना किसी यथेष्ट कारण व औचित्य के पुनः नियोजित करने के अधिकार से जानबूझकर वंचित रखा गया, उक्त श्रमिकों को नियमित नियुक्ति अप्रार्थी कार्यालय से सन् 93 में दी जाने पर व प्रार्थी को उसके नियुक्ति के हक से वंचित करने पर तुरंत उसने अपना विवाद श्रम विभाग के समक्ष उठाया है, अप्रार्थी द्वारा प्रार्थी की सेवा अधिनियम के आज्ञापक प्रावधानों एवम् अधिनियम की पांचवी अनुसूची के तहत “श्रमिक विरोधी नीति” अपनाते हुए बतौर छंटनी के समाप्त की गयी है और अधिनियम की धारा 77-78 की खिलाफ वर्जी कर सेवामुक्ति अवैधानिक तौर से की गयी है। प्रार्थी श्रमिक द्वारा प्रस्तुत अपने क्लेम विवरण में आगे यह भी अंकित किया गया है कि रेलवे बोर्ड के निर्देशानुसार जिन श्रमिकों ने 90 दिवस की सेवा पूर्ण की है एवम् होटवेदर वाटरमेन के रूप में 120 दिवस की सेवा पूर्ण की है को भी पुनः नियोजित किये जाने के स्पष्ट आदेश होते हुए भी प्रार्थी को नियुक्ति के हक से जानबूझकर वंचित रखा जबकि प्रार्थी पुनः नियुक्ति के लिये हमेशा तत्पर रहते हुए प्रयत्नशील रहा और उसके पद का कार्य अप्रार्थी संस्थान में बराबर रहते हुए तथा आज भी उक्त पद का कार्य होने से वह पुनः सेवा में बहाली का हकदार रहा

है, रेलवे बोर्ड के आदेशों की पालना में अप्राथी द्वारा लाईव रजिस्टर खोला जाकर प्राथी जैसे श्रमिकों की सूची बनाई गई जिसमें प्राथी का भी नाम कार्यावधि के अनुसार अंकित कर प्राथी को भी पद व कार्य के अनुरूप स्क्रीनिंग के लिये बुलाया जाना था लेकिन अप्राथी द्वारा जानबुझकर आमंत्रित नहीं किया एवम् अपने चाहते व्यक्तियों को नई नियुक्तियां दी जाकर प्राथी को काम के अधिकार से वंचित रखा है, नियोजक की यह समस्त कार्यवाही "अनफेयर लेबर प्रैक्टिस" की साबित रही है। आगे प्राथी में स्वयं को सेवापृथक करने के पश्चात् अनेक श्रमिकों सर्वश्री सुजानसिंह, राजकुमार, मोहनलाल, बलवन्त, ओमप्रकाश, राजेन्द्र, सुभाष, धर्मवीर व धनपतिसिंह के पिता का नाम व उनकी नियुक्ति तिथि का उल्लेख करते हुए उनको नई नियुक्ति देने का कथन करते हुए यह भी अंकित किया है कि इनकी सेवा नियमित की जाकर सेवा में बदस्तुर बनाये रखा है जबकि लाईव रजिस्टर के अनुसार प्राथी को प्राथमिकता नहीं दी गयी, यही नहीं महेश कुमार नियुक्ति दिनांक 28-2-85 एवम् ओमप्रकाश नियुक्ति दिनांक 5-1-85 को भी नियमित नियुक्ति दी गयी है, नियोजक द्वारा प्राथी के नाम से जारी कैंजुवल लेबर कार्ड से यह तथ्य प्रमाणित रहा है कि प्राथी की सेवावधि 136 दिन की है, इस प्रकार अप्राथी नियोजक द्वारा समझौता वार्ता के दौरान, पेश जवाब के तथ्यों के अनुसार 100 दिवस से अधिक की सेवा पर प्राथी भी पुनः नियोजन का विधिक हकदार रहा है। भारतीय रेल स्थापना मैनुवल जिल्द 1990 संस्करण के पैरा-200(1) की उपधारा "ख" (III) के प्रावधान के अनुसार भी 120 दिवस की सेवावधि पर श्रमिक को अस्थाई अर्थात् स्वीकृत हैसियत से माने जाने का प्रावधान रखा है और उक्त उपधारा की टिप्पणी 8(2) के तहत भी प्राथी पुनः नियोजन का अधिकारी रहा है जिसकी अनदेखी करते हुए प्राथी की सेवा अवधि व अनुचित रूप से समाप्त की गयी है जिसके परिणामस्वरूप प्राथी का जीवन निर्वाह संकट में पड़ गया तथा प्राथी सेवा पृथक तिथि से बेकार व बेरोजगार है और कहीं भी नियोजित नहीं रहा है। अंत में पुनः सभी देय लाभों सहित पूर्ववत पद व वेतन पर प्राथी के साथ के श्रमिकों को नियमित नियुक्ति सन् 1993 में दिये जाने की तिथि से संवेतन नियोजित करने की प्रार्थना करते हुए यह भी अंकित किया है कि प्राथी के द्वारा इस सम्बन्ध में नियोजक को निवेदन करने पर अप्राथी द्वारा प्राथी को पुनः सेवा में नियोजित करने का आश्वासन देकर बैठायें रखा, इसी कारण वह अपना विवाद तुरन्त समय पर नहीं उठा सका, अधिनियम की धारा 25-एच के तहत भी वह पुनः नियोजित होने का अधिकारी है।

4. अप्राथी नियोजक द्वारा प्रस्तुत जवाब दावे में अंकित किया है कि कार्यालय खण्ड अभियंता (पी. वे. II) उ. रे. हिसार के रिकार्ड के अनुसार प्राथी ने निम्नलिखित अवधि में अर्थात् 23-5-94 से 14-6-84 में 22 दिन, 15-6-84 से 14-7-84 तक 30 दिन, इस प्रकार कुल 52 दिन अनियमित मजदूर के रूप में ही कार्य किया है, प्राथी ने अपने क्लेम में वर्णित रेलवे बोर्ड के पत्र संलग्न नहीं किये हैं अतः उसके पद की अधिकारिता को नहीं जांचा जा सकता है वैसे वह स्वयं ही कार्य छोड़कर स्वतः चला गया था इसलिये अब नियोजन में कार्य करने का पात्र नहीं है। अन्य सभी तथ्यों को अस्वीकार करते हुए यह भी अंकित किया है कि प्राथी ने क्लेम की चरण सं. 4 में जिन श्रमिकों के नाम अंकित किये हैं उनमें से मात्र अवतारसिंह पुत्र कन्हैयालाल ही

गैंगमेन के पद पर कार्यरत है जो प्राथी से काफी वरिष्ठ है और उसकी कार्यवधि 15-12-76 से 31-12-88 तक कुल 1745 दिन की होनी बताई है और यह जवाब दिया है कि अनियमित श्रमिकों की वरिष्ठता सूची सम्बन्धित कार्यालयों के नोटिस बोर्ड पर लगाई गई और उसी के अनुरूप अनियमित मजदूरों का नियोजन किया गया था, प्राथी 14-7-84 के बाद कभी भी पुनः नियोजन के लिये उपस्थित नहीं हुआ और ना ही उसने कोई प्रार्थनापत्र दिया, प्राथी द्वारा उठाया गया विवाद निराधार है, प्राथी स्वयं की इच्छा से कार्य छोड़कर गया है उसे रेल प्रशासन ने नहीं निकाला है, अधिनियम के अनुसार श्रमिक प्राथी ने कार्य अवधि के अंतिम दिन से एक साल में 240 दिन तक कार्य नहीं किया है अतः वह नियमित श्रमिक नहीं कहला सकता है, इस मामले में अधिनियम लागू नहीं होता और न ही छंटनी के अन्तर्गत आता है अतः वह अधिनियम के प्रावधानों का लाभ प्राप्त करने का अधिकारी नहीं है, प्राथी ने जो दिनों का हवाला दिया है वह नियमित श्रमिक को सीपीसी स्केल देते समय लागू होता है। वर्तमान में अनियमित श्रमिकों की भर्ती पर रोक है। आगे यह भी अंकित किया है कि प्राथी स्वयं अपनी इच्छा से दिनांक 14-7-84 के पश्चात् कार्य छोड़कर चला गया और पुनः नियोजन के लिये उपस्थित नहीं हुआ अतः एस्टेब्लिशमेंट मैनुवल के पैरा 200 (1) की उपधारा (ख) (III) के प्रावधान का लाभ उठाने का अधिकारी नहीं है और उपलब्ध रिकार्ड के अनुसार उनके द्वारा मात्र 52 दिवस ही कार्य किया है अतः वह किसी भी प्रकार से लाभ का अधिकारी नहीं है, प्राथी ने अपने पुनः नियोजन के लिये कोई पत्र व्यवहार नहीं किया और प्राथी को किसी प्रकार का आश्वासन नहीं दिया गया। अंत में चाहा गया अंसतोष अस्वीकार करते हुए अतिरिक्त कथनों में यह भी कथन किया है कि प्राथी द्वारा विवाद विलम्ब से उठाया गया है जिसका कोई युक्तियुक्त कारण नहीं बताया है और देरी के लिये प्रतिदिन का उपयुक्त कारण बताना आवश्यक है, टैम्प्रेरी लेबर एप्लीकेशन "टी. एल. ए." की अवधि समाप्त होते ही सेवा स्वतः ही समाप्त हो जाती है, प्राथी को सक्षम अधिकारी द्वारा कभी भी सेवामुक्त नहीं किया गया तक प्राथी जैसे कर्मकार का नियुक्ता सहायक अभियंता उत्तर रेलवे सिरसा हैं को आवश्यक पक्षकार नहीं बनाया गया है अंत में स्वयं के विरुद्ध प्राथी का क्लेम निरस्त किये जाने की प्रार्थना की है।

5. पक्षकारों द्वारा अपने-अपने पक्ष समर्थन में प्रस्तुत के दौरान, प्राथी पक्ष की साक्ष्य में स्वयं प्राथी श्रमिक राजकुमार ने अपना शपथपत्र पेश किया है जिसके विपरीत अप्राथी श्रम की ओर से जी. डी. गुप्ता, सैक्सन इंजीनियर पीवे उत्तर रेलवे हिसार का शपथपत्र पेश हुआ है। दोनों पक्षों द्वारा प्रत्येक एक-दूसरे पक्ष के साक्षी से जिरह की गयी है एवम् प्रलेखीय साक्ष्य भी पेश हुई है।

6. विद्वान पत्रकारों की बहस सुनी गयी एवम् पत्रावली का अवलोकन किया गया हमारे समक्ष संबंधित इस प्रसंग के निवारण हेतु प्रमुख रूप से विचारणीय प्रश्न यही है कि:

क्या रेल प्रबन्धन के मण्डल प्रबन्धक उत्तर रेलवे बीकानेर द्वारा औद्योगिक विवाद अधिनियम की धारा 25-एच. के अन्तर्गत पुनर्नियोजन के समय प्राथी राजकुमार को प्राथमिकता नहीं देना उचित समय वैद्य था यदि नहीं तो प्राथी श्रमिक क्या राहत किस दिनांक से वह प्राप्त करने का अधिकारी है;

इस सम्बन्ध में प्रार्थी श्रमिक राजकुमार द्वारा प्रस्तुत अपने शपथपत्र से साक्ष्य के दौरान अपने मुख्य परीक्षण के समय ब्यान में यह कथन किया है कि वह उत्तर रेलवे में अप्रार्थी नियोजक के अधीन रेल निरीक्षक, उत्तर रेलवे हिसार के नियंत्रण में दिनांक 15-4-84 को कैजुअल लेवर वाटरमैन के पद पर नियुक्त हुआ था जिसकी सेवा दिनांक 5-9-04 को वतौर छंटनी के समाप्त कर दी गई, प्रार्थी द्वारा प्रस्तुत इस शपथ पत्र में स्वयं द्वारा प्रस्तुत क्लेम विवरण में अंकित तथ्यों की पुनरावर्ती करते हुए साक्ष्य के दौरान प्रार्थी डब्लू. 1 तथा 17 तक के प्रलेख भी पेश किये हैं और यह भी कथन किया है कि सेवामुक्ति के बाद नियुक्त श्रमिकों के सम्बन्ध में अपने अथक प्रयासों से प्रदर्श डब्लू. 7 तथा 16 फोटो कॉपीयां प्राप्त कर सका है जिनके अलग अप्रार्थी से कब्जा व अधिकार दो में है, प्रार्थी शपथकर्ता दिनांक 27-1-98 को तथा 9-10-98 को प्रार्थनापत्र प्रस्तुत करते हुए श्रमिकों के कार्यविवरण व लाईव रजिस्टर तलब करवाये थे परन्तु अप्रार्थी द्वारा अस्पष्ट जवाब देते हुए रिकार्ड पेश नहीं किया, अगर लाईव रजिस्टर पेश हो जाता तो पूर्ण सच्चाई की जानकारी हो जाती। उक्त गवाह ने जिरह के दौरान पूछने पर यह भी बताया है कि सर्वप्रथम मेरी नियुक्ति 15-4-84 को हुई थी मुझे पता नहीं कि मेरी नियुक्ति टी.एल.ए.आर. के आधार पर हुई या कैसे हुई, यह बात सही है कि मैंने खंड अधिनता उत्तर रेलवे हिसार के अधीन कुल 52 दिन काम किया था, मैंने अवतार सिंह पुत्र कन्हैया लाल के कार्य विधि का रिकार्ड देखा है उसने मात्र 118 दिन ही काम किया है जब कि मैंने 136 दिन काम किया है, मुझे यह जानकारी नहीं है कि श्रमिक अवतार सिंह ने 15-12-76 से 3-8-84 तक नियमित श्रमिक के रूप में 167 दिन तक काम किया है, उस समय तक अवतार सिंह को 4-8-84 से 31-12-88 तक कुल 1578 दिन काम करने के कारण सीपीसी स्कैल दिया या कौन सा स्कैल दिया, पता नहीं है। यह कहना गलत है कि मैं दिनांक 14-7-84 को स्वयं काम छोड़कर चला गया हो और गैर हाजिर हो गया हो आज खुद कहा कि मैंने काम नहीं छोड़ा था बल्कि मुझे एस. एस. के पास काम करने के लिये भेज दिया था, एस. एस. के पास भेजने का मेरे पास लिखित में कोई आदेश नहीं है मैं भीमो लेकर एस. एस. के पास काम करने के लिये चला गया था, एस. एस. को भीमो दे दिया था। यह कहना गलत है कि मैं दिनांक 14-7-84 को स्वयं ही काम छोड़कर चला गया होइ इसलिए मेरा नाम लाईव रजिस्टर में अंकित नहीं हो सका हो अब खुद कहा कि मैंने तो अपना नाम लाईव रजिस्टर में अंकित करने बाबत कई प्रार्थनापत्र दिये थे, मैंने लाईव रजिस्टर में नाम दर्ज करने के लिये बी. डब्लू. आई. और एस. एस. को प्रार्थनापत्र सन् 1985 व 1986 में दिये थे, आज खुद कहा कि उन्होंने आश्वासन दिया था कि हम आपको काम पर रखने, प्रार्थनापत्रों की रसीद मुझे नहीं दी। प्रदर्श डब्लू. 5 व प्रदर्श डब्लू. 7 लगायत 17 में वर्णित कर्मचारीगण को रेगुलर कर दिया है या नहीं मुझे नहीं पता।

7. प्रार्थी पक्ष की इस साक्ष्य के विपरीत साक्ष्य के दौरान अप्रार्थी पक्ष की ओर से प्रस्तुत गवाह नवाब जी. डी गुप्ता द्वारा प्रस्तुत अपने शपथपत्र पर मुख्य परीक्षण के बयानों में स्वयं का 1998 से सैक्शन इंजीनियर-II पीबे हिसार के पद पर कार्यरत रहना अंकित करते हुए नियोजक द्वारा प्रस्तुत जवाब दारो में वर्णित तथ्यों की पुनरावर्ती करते हुए यह कथन किया है कि कार्यालय अभिलेख के

अनुसार प्रार्थी ने अनियमित मजदूर के रूप में पी. डब्लू. II हिसार के पास 52 दिन कार्य किया तत्पश्चात् वह स्वयं काम छोड़कर चला गया इसलिए वह अब नियोजन में कार्य करने का पात्र नहीं है, प्रार्थी 14-7-84 के बाद भी नियोजन के लिए उपस्थित नहीं हुआ और न ही उसने कोई प्रार्थनापत्र सक्षम अधिकारी के कार्यालय में दिया, जहाँ तक लाईव रजिस्टर का प्रश्न है रेलवे बोर्ड के अनुसार 1-1-81 से पहले अनियमित श्रमिक प्रार्थनापत्र देकर लाईव रजिस्टर में नाम दर्ज करवा सकते हैं इसके लिए अवधि का निर्धारण 31-3-87 किया गया और बाद में बढ़ाकर 31-1-88 किया गया चूंकि 1984 में प्रार्थी स्वेच्छा से कार्य छोड़कर चला गया इसलिए उसका नाम लाईव रजिस्टर में नहीं लिखा जा सका, प्रदर्श डब्लू. 7 से 15 में दर्शाये गये कर्मकार अभी नियोजन में नहीं है, प्रार्थी व अन्य कर्मचारी प्रदर्श डब्लू. 7 से 15 में दर्शाये गये हैं को आकस्मिक कर्मकार के तौर पर निश्चित अवधि के लिए टीएलए सक्षम अधिकारी की स्वकृति के आधार पर की जाती है और टीएलए अवधि समाप्त होते ही कर्मचारी की सेवा स्वतः समाप्त हो जाती है, प्रार्थी से कनिष्ठ कर्मकार कोई भी अभी नियोजन में नहीं है। प्रतिपरीक्षा में पूछने पर उक्त गवाह ने यह भी बताया है कि मैं अप्रैल 84 से जुलाई 84 की अवधि में रेवाड़ी में पद-स्थापित था, मुझे इस प्रकरण की व्यक्तिगत जानकारी तो नहीं है आज खुद कहा कि मुझे रिकार्ड के आधार पर इस प्रकरण की जानकारी है। राजकुमार श्रमिक का प्रकरण में किसी प्रकार का इस्तीफा मौजूद नहीं है। दिनांक 15-7-84 के टी.एल.ए. में राजकुमार श्रमिक का नाम नहीं अंकित किया गया था। टीएलए की स्वीकृति डिविजनल ऑफिसर डिवीजनल सुपरीन्टेन्डेंट कोरडिनेशन, बीकानेर (उ.रे.) करता था, रिकार्ड के अनुसार श्रमिक राजकुमार और डी.एस. ई के बीच में नौकरी बाबत कोई कान्ट्रैक्ट नहीं हुआ था आज खुद कहा कि जब इस श्रमिक को स्क्रीनिंग के लिये बुलाया गया तो वह हाजिर नहीं हो पाया, स्क्रीनिंग के लिए किसी को भी व्यक्तिगत सूचना नहीं दी जाती है मात्र नोटिस निकाला जाता है, वह नोटिस न्यायालय में पेश नहीं किया है। स्क्रीनिंग की तारीख मुझे जुबानी याद नहीं है, लाईव रजिस्टर का सीधा प्रसारण संधारित डिवीजन ऑफिस में होता है, हमारे यहाँ पर नहीं होता, इसलिए पेश नहीं किया गया है, चूंकि राजकुमार बुलाने पर नहीं आया इसलिए सन् 1981 से 1988 तक संधारित किए गए लाईव रजिस्टर में उसका नाम अंकित नहीं किया गया, राजकुमार को आने का नोटिस जारी किया गया था वह नोटिस न्यायालय की पत्रावली में पेश नहीं किया है। लाईव रजिस्टर में नाम होने पर ही वरिष्ठता सूचि बनती है, राजकुमार की वरिष्ठता सूचि नहीं बनाई थी, क्लेम के मद सं. 8 में वर्णित श्रमिकों की वरिष्ठता सूचि नहीं बनाई, समझौता वार्ता में विभाग की ओर से प्रस्तुत जवाब में अवतार सिंह के कार्य दिवस 118 बताये हैं जबकि आज शपथपत्र में 1745 दिन बताये हैं यह रिकार्ड के आधार पर विवरण दिया हुआ है आज खुद कहा कि प्रदर्श डब्लू. 17 में अवधि (तारीख) नहीं दी गयी है और दोनों की तारीखों (कार्य अवधि) में अंतर है।

8. पत्रावली पर आयी समस्त मौखिक एवम् दस्तावेजी साक्ष्य का अवलोकन किया गया, प्रार्थी श्रमिक ने अपनी साक्ष्य में अप्रार्थी नियोजक के अधीन रेल निरीक्षक उत्तर रेलवे हिसार के नियंत्रण में

15-4-84 को केजुअल लेबर नियुक्त होने का कथन किया तथा वह भी कथन किया है कि उसकी सेवाये 5-9-84 को समाप्त कर दी गयी। नियोजक की ओर से जो साक्ष्य पत्रावली पर प्रस्तुत हुई है उसके अनुसार प्रार्थी ने अनियमित मजदूर के रूप में पी.डब्ल्यू-11 हिसार के पास 52 दिन कार्य किया तत्पश्चात् वह स्वयं काम छोड़कर चला गया, प्रार्थी 14-7-84 के बाद कभी भी नियोजन के लिए उपस्थित नहीं हुआ और न ही कभी भी प्रार्थनापत्र सक्षम अधिकारी के कार्यालय में दिया। प्रार्थी पक्ष की ओर से साक्ष्य में यह साबित नहीं किया गया कि वह दिनांक 14-7-84 के बाद कभी भी नियोजन के लिए अप्रार्थी के समक्ष उपस्थित हुआ और उसने कोई प्रार्थनापत्र सक्षम अधिकारी के समक्ष पेश किया। जहाँ तक लाईव रजिस्टर का प्रश्न है, इस सम्बन्ध में रेलवे बोर्ड के अनुसार 1-1-81 से पहले अनियमित श्रमिक प्रार्थनापत्र देकर लाईव रजिस्टर में नाम दर्ज करा सकता था इसके लिए अवधि का निर्धारण 31-3-07 किया गया और बाद में बढ़ाकर 31-1-88 की गयी, चूँकि 84 में प्रार्थी स्वयं कार्य छोड़कर चला गया था इसलिए उसका नाम लाईव रजिस्टर में नहीं लिखा जा सका था। जहाँ तक प्रदर्श डब्ल्यू 7 से 15 में गये कर्मकारों के नियोजन का सम्बन्ध है, यह सभी कर्मकार अभी नियोजन में नहीं हैं होना अप्रार्थी की ओर से प्रस्तुत साक्ष्य में बताया गया है, अन्य कर्मकार जो प्रदर्श डब्ल्यू 7 से 15 में दर्शाये गए हैं वे आकस्मिक कर्मकार के तौर पर निश्चित अवधि के कार्य के लिए टी.एल.ए की सक्षम अधिकारी की स्वीकृति पद नियुक्ति की गयी थी और टी.एल.ए अवधि समाप्त होने पर सेवा स्वतः ही समाप्त हो जाती है। अप्रार्थी की ओर से प्रस्तुत साक्ष्य के अनुसार प्रार्थी से कनिष्ठ कोई भी कर्मकार नियोजन में नहीं है। अप्रार्थी की ओर से प्रस्तुत साक्ष्य में यह भी आया है कि चूँकि प्रार्थी श्रमिक बुलाने पर नहीं आया इसलिए संधारित किये गये लाईव रजिस्टर में उसका नाम नहीं लिखा गया, नोटिस दिया गया था जो नोटिस न्यायालय की पत्रावली पर प्रस्तुत नहीं किया गया है। प्रार्थी श्रमिक अपनी साक्ष्य से यह साबित करने में असफल रहा कि वह 14-7-84 के बाद नियोजक के समक्ष नियोजन के लिए उपस्थित हुआ और उसने कोई प्रार्थनापत्र सक्षम अधिकारी के कार्यालय में दिया। ऐसी स्थिति में प्रार्थी का नाम लाईव रजिस्टर में दर्ज होने का कोई आधार नहीं है और जब तक लाईव रजिस्टर में नाम सम्मिलित नहीं किया जाता तब तक वरिष्ठता सूचि में नाम सम्मिलित नहीं हो सकता। ऐसी स्थिति में प्रार्थी के पुनर्नियोजन के समय प्रार्थी श्रमिक को प्राथमिकता दिये जाने के सम्बन्ध में कोई आधार नहीं बनता है। उत्तरी रेलवे प्रबन्ध तंत्र के मण्डल प्रबन्धक उत्तर रेलवे बीकानेर द्वारा अधिनियम की धारा 25-एच के अन्तर्गत पुनः नियोजन के समय प्रार्थी राजकुमार को प्राथमिकता नहीं देना उचित एवम् वैध था। प्रार्थी श्रमिक कोई राहत पाने का अधिकारी नहीं है।

9. अतः सरकार के श्रम मंत्रालय द्वारा प्रेरित इस प्रसंग को उत्तरित करते हुए यह पंचाट इस प्रकार पारित किया जाता है कि उत्तरी रेलवे प्रबन्ध तंत्र के मण्डल प्रबन्धक उत्तर रेलवे बीकानेर द्वारा अधिनियम की धारा 25-एच के अन्तर्गत पुनः नियोजन के समय प्रार्थी राजकुमार को प्राथमिकता नहीं देना उचित एवम् वैध था। प्रार्थी श्रमिक कोई राहत पाने का अधिकारी नहीं है।

उक्त अधिनियम की धारा 17 (i) के अन्तर्गत केन्द्रीय सरकार को प्रकाशनार्थ भेजा जाये।

10. आज्ञा आज दिनांक 25-8-2007 को निवृत्त न्यायालय में सुनाई गई।

डॉ. वीरेन्द्र कुमार माथुर

नई दिल्ली, 22 अक्टूबर, 2007

का.आ. 3275.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट (संदर्भ संख्या 10/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2007 को प्राप्त हुआ था।

[सं. एल-12012/108/2005-आई आर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 22nd October, 2007

S.O. 3275.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2006) of Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the industrial dispute between the management of State Bank of India, and their workman, received by the Central Government on 22-10-2007.

[No. L-12012/108/2005-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE SRI R. G. SHUKLA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 10 of 2006

In the matter of dispute between :

Sri Ram Pratap
son of Sri Nokhe Lal
House No. 32/01 Kazi khara Road
Harjinder Nagar II Kanpur Nagar
Kanpur

AND

The Regional Manager
State Bank Of India
2420 Regional Office
the Mall Kanpur.
Kanpur Nagar

AWARD

1. Central Government, Ministry of Labour, vide notification No. L-12012/108/2005 IR (B-II) dated 23-1-06 has referred the following dispute for adjudication to this Tribunal:

“Whether the action of the management of State Bank of India in refusing to employ Sri Ram Pratap and recruiting new hands in pursuance to the advertisement is legal and justified? If not to what relief the workman concerned is entitled to?”

2. At the outset it may be pointed out that from the language of the schedule of reference order it is quite clear that the same is outside the ambit and scope of Industrial Dispute either under section 2-A of the Industrial Disputes Act, 1947, or under section 10(1) of the Act in as much as the dispute has not been espoused by group of workers or the workman's case is not a case of retrenchment, hence the reference is going to be decided against the workman on this short ground.

3. However before answering the reference it would be just and proper to deal with the merit of the case.

4. Briefly stated facts of the case as set up by the workman in his statement of claim is that for the first time the workman was engaged by the opposite party bank on 15-6-84 at its Khajuha Branch of the bank in District Fatehpur and the opposite party used to take work of messenger/peon. The opposite party bank after taking work as such transferred the workman to its Bindiki Branch where he worked continuously till 28-6-86. It is further pleaded by the workman that the opposite party during the period 30-6-86 to 26-11-86 used to pay him wages in the fake name viz Pancham Lal which is an act of unfair Labour Practice. He further pleads that the branch manager maintained pressure and out of fear he changed his name as Pancham Lal. With a view that the workman may not complete 240 days of continuous service, pressure was again maintained upon him to change his name and he started performing his duties in the name of Shiv Prasad. He further worked in the name of Vijay Bahadur. It has been pleaded that under the terms of agreement the opposite party bank was obliged to appoint such persons who had worked with opposite party and in order to seek his employment the workman applied for the post in pursuance of advertisement still he had never been called upon by the opposite party bank for his interview or appointment. Lastly it has been prayed that he be reinstated in the service of the opposite party bank with benefits attached with the post.

5. Opposite Party bank has contested the claim of the workman on variety of grounds inter alia alleging that the present reference is not an industrial dispute as it relates

to the appointment in respect of advertisement. It has also been pleaded by the opposite party that the reference is not with reference to the termination of service of the claimant therefore it is not an industrial dispute. Claimant has never worked with the opposite party bank at Kanpur. It has been admitted by the bank that the claimant had worked at Bank's Khajuha Branch during the period 16-6-84 to 21-7-85 as a daily rated casual worker. Opposite Party had never terminated the services of the claimant in any manner whatsoever. Workman was clearly made known of the fact that he was being engaged for 60 days only therefore, the present claim is not covered within the term 'retrenchment'. It has also been pleaded by the opposite party that the present dispute is highly belated and therefore is not maintainable. Workman was neither appointed against any post nor he was ever issued any appointment letter and he had simply worked for sixty days as a casual labour in the opposite party bank. On the basis of above pleadings it has been prayed that the present claim is devoid of merit and is liable to be rejected.

6. After exchange of pleadings between the parties the contesting parties adduced oral as well as documentary evidence in support of their respective claims.

7. Tribunal has heard arguments of the parties at length and has also perused the file carefully and is of the opinion that it would be futile exercise if the tribunal proceeds to appreciate the evidence of the case and other points argued before the tribunal by the parties concern mainly for the reasons that the schedule of reference order do not speak about the date of termination of the workman nor the workman has asserted the date of termination of his service in his entire claim statement. Therefore, even for the sake of arguments if it is conceded that the action of the opposite party bank in refusing employment is neither legal nor justified then a normal question arises for determination as to from what date the workman be granted relief as claimed by him. From this point of view the tribunal is not willing to accept the claim of the workman. So far as action of the opposite party in making appointment of fresh hands is concerned there is no definite pleadings in this regard in the statement of claim on behalf of the workman. Therefore, when there is no specific pleadings evidence to this effect if any adduced by the workman is of no help to the workman.

8. No other point has been pressed by the parties.

9. For the reasons discussed above, it is held that the claimant is not entitled for any relief as claimed by him in his statement of claim.

10. Reference is answered accordingly against the workman and in favour of the management.

R.G. SHUKLA, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2007

का.आ. 3276.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट (संदर्भ संख्या 132/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2007 को प्राप्त हुआ था।

[सं. एल-12012/24/1999-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 22nd October, 2007

S.O. 3276.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 132/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the industrial dispute between the management of State Bank of India and their workman, which was received by the Central Government on 22-10-2007.

[No. L-12012/24/1999-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

**BEFORE SHRI R. G. SHUKLA, PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM-LABOUR-COURT, KANPUR**

Industrial Dispute No. 132 of 1999

In the matter of dispute between:

Raghubar Prasad son of Kailash Pd. Shukla, Village Pütur,
Post Katehar Kala Thana, Dhurki District Garhwa, Bihar.

And

The Chief General Manager,
State Bank of India, Local Head Office,
Lucknow.

AWARD

1. Central Government, MOL, New Delhi, vide notification No. L-12012/24/1999 IR(B-I) dated 10-5-99, has referred the following dispute for adjudication to this tribunal:

“Whether the action of the management of State Bank of India in terminating the services of Sri Raghubar Dayal w.e.f. 15-4-96 is justified? If not, what relief the workman is entitled to?”

2. The case in short as set up by the workman in his statement of claim is that he was appointed by the opposite party bank at the post of peon on 1-9-87 at their Renukoot Branch and he worked continuously for 240 days and more. He continued raising demand for regularising him in the

service of the opposite party bank still the opposite party terminated the services of the workman w.e.f. 15-4-96 violating service rules. He demanded restatement from the opposite party but no heed was paid by them towards the demand of the workman. It has also been pleaded by the workman that the opposite party used to send him at other district with the dak of the branch and bank also issued eye card in his favour. It has also been pleaded that the termination is bad in law as no notice pay or retrenchment compensation was paid to the workman by the opposite party. On the basis of above pleadings, it has been prayed that their workman be reinstated in the service of the bank with full back wages and all consequential benefits.

3. The claim of the workman has been denied by the bank on a number of grounds inter alia alleging that the workman was never engaged by the opposite party and no cause of action ever accrued in his favour for raising the alleged industrial dispute; that the workman was never employed by the opposite party as alleged by him; that as per provisions of section 2(o) (bb) the workman is not entitled for any relief; that he is not a protected employee under the provisions of I. D. Act as he had never rendered continuous service within the meaning of sec. 25-B of the Act; that the claim of the workman is not tenable in the eye of law and therefore is liable to be rejected *in limine*; that there has never been any relationship of employer and employee between the opposite party bank and the workman, as the workman has never been under the control and supervision of the opposite party bank. The claim is also not maintainable being belated. Head office of the opposite party used to allocate a portion of amount as subsidy for the various facilities, such as promotion of canteen facility, setting up of the library and reading room, promotion of cultural activities, providing educational facilities etc., to its employees. For the performance of such welfare activities Circle Implementation Committee, at the circle level and local Implementation Committee at branch level used to be created and apart from the other members, the Chief General Manager used to be the Ex-officio President of Circle Implementation Committee and the Branch Manager of the branch office used to be Ex-officio President of the Local Implementation Committee. Local Implementation Committee under the branch had been constituted and was in operation in the year 1987 at Renukoot Branch of the bank and the said Committee had established a canteen for promotion of canteen facilities and the applicant was engaged as a canteen boy of the said local Implementation Committee and all his charges and expenses were paid by the said Committee. The opposite party did not pay any single penny to the applicant as wages. Thus there was no privity of contract of engagement in between the contesting parties. The bank had never employed the workman as employee of the bank, therefore, question of termination of the services of the workman by the bank does not arise at all. On the basis of

above pleadings it has been alleged that the claim of the applicant is devoid of merit being misleading and misconceived therefore is liable to be dismissed.

4. Workman has also filled rejoinder in support of his claim but therein nothing new has been pleaded except reiterating the averments already pleaded by him in his statement of claim.

5. After exchange of pleadings both contesting parties have filled documents and adduced their respective evidence in support of their claims and counter claims. Whereas workman has examined himself as w.w.1 opposite party examined its witness by name Rajul Bhatnagar as M.W.1.

6. Tribunal has heard the arguments of the contesting parties at length and have also perused the record of the case carefully.

7. From the pleadings of the parties it is crystalised that whereas the claim of the workman is that he was appointed by the opposite party bank as peon and had worked continuously for over 240 days in one calendar year still his services has been determined by the opposite party bank in violation of the provisions of the Act. On the contrary this has been denied by the bank and it has been averred that the workman was never employed by the opposite party bank in any capacity what soever nor he was paid any wages by the opposite party bank nor any appointment order was ever issued in his favour by the bank. As a matter of fact he was engaged by the branch manager of the branch in his capacity of ex-officio chairman of Local Implementation Committee at branch level and that the alleged workman was paid his remuneration from the budget allocated for the Local Implementation Committee, therefore, no relationship of employer and employee ever existed between the contesting parties and under these circumstances question of termination of the service of the alleged workman does not arise at all.

8. From the above pleadings of the parties it would be seen as if there exists relationship of master and servant between the contesting parties. On the issue there is solitary testimony of workman and evidence of management witness. Management witness in his examination in chief on oath before this tribunal has categorically stated that no employee by name Raghubar Prasad was ever employed in the branch. Bank in the interest of employees had established a Local Implementation Committee which was headed by Chief Manager. There is no control of the bank over the Local Implementation Committee and only for the promotion of welfare activities the bank used to provide funds. On need basis some time work of casual nature was also taken from the alleged workman for which wages were paid to him through petty vouchers. Bank used to pay wages at Rs. 75/- per day.

9. Workman appeared in the witness box and stated on oath before the tribunal that he was appointed by the

bank on 1-9-87 as peon. Before appointment application form together with certificates were obtained by the bank. He was also interviewed before his appointment and that he was never issued any appointment letter. His duties were to provide ledgers from one seat to another seat, to place vouchers in the ledgers, to get opened the branch and other work of different nature were taken by the bank from him. He also stated that one person by name Dewakar Giri was employed by the bank after his termination from the services of the bank. Witness has further admitted that no orders in writing were ever passed terminating his services by the bank. In his cross examination the witness has clearly admitted the fact that he never raised his demand for bonus, fund, leave encashment etc except wages. He also admits that in the eye card issued by the bank in his favour post has not been mentioned therein. He goes on to states that he had not mentioned the fact in his statement of claim that he was interviewed by the bank before making appointment.

10. After giving anxious considerations to the evidence of the parties it stands established that the workman has completely failed to substantiate his claim that there ever existed relationship of master and servant between him and the opposite party bank. From his evidence it is also proved that he was employed by the Local Implementation Committee run at the branch level and he was paid his wages out of funds allocated for the Local Implementation Committee and the bank had never paid him his wages or he was ever employed by the bank. On the contrary the claim of the opposite party bank has been fully substantiated by the witness of the bank that the applicant had been engaged by the Local Implementation Committee run at branch level at Renukoot Branch of the bank and workman used to be paid his wages from the funds allocated for running the said Committee.

11. If the workman has not been employed by the opposite party bank how it can be presumed that he was terminated from the service of the opposite party. Therefore, the present claim of the workman is not maintainable against the opposite party State bank of India as it has not been proved that the workman at any point of time was appointed by the bank. Therefore, his claim is outside the ambit and scope of the provisions of Industrial Disputes Act, 1947, and the alleged workman cannot be granted any relief under the Act as has been claimed by him in the present reference.

12. For the reasons discussed above, it is held that the claim of the workman against State Bank of India is not maintainable and he is not entitled for any relief against the opposite party bank as it has not been established at all that there existed any relationship of master and servant between the bank and the alleged workman. It is also held that the provisions of Industrial Disputes Act, 1947, are not at all applicable in the case of the workman. Accordingly reference is answered against him holding that he is not entitled for any relief.

R. G. SHUKLA, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2007

का.आ. 3277 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट (संदर्भ संख्या 150/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2007 को प्राप्त हुआ था।

[सं. एल-12012/346/1997आईआर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 22nd October, 2007

S.O. 3277.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 150/1998) of Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the industrial dispute between the management of State Bank of India and their workmen, was received by the Central Government on 22-10-2007.

[No. L-12012/346/1997-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

**BEFORE SHRI R. G. SHUKLA, PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM-LABOUR COURT, KANPUR**

Industrial Dispute No. 160 of 1998

Shri Balishtar Sharma
S/o Ram Awatar Sharma
Vill. Abdullahganj
Post Khas
District Badaun

AND

The Branch Manager
State Bank of India
Risholi Nijampur
District Badaun

AWARD

1. Central Government, MOL, New Delhi, vide notification No. L-12012/346/97-IR(B-1) dated 10-8-98, has referred the following dispute for adjudication to this Tribunal:

“Whether the action of the management of State Bank of India in terminating the services of Sri Balishtar Sharma Ex-temporary peon w.e.f 18-11-90 and re-employed another person namely Sri Chetan Giri Goswami in his place, is just and fair and legal? If not what relief he is entitled to and from what date?”

2. Case of the workman as set up in his statement of claim in short is that he is a physically handicapped person. He was engaged through employment exchange after selection process by the bank and the opposite party vide

appointment order dated 4-8-90 appointed the workman at the post of messenger. It is further case of the workman that he was paid his wages at scale rate plus admissible allowances on the post of messenger. It is also pleaded that the workman worked against a permanent post of messenger for the period 4-8-90 to 17-11-98, opposite party bank had also issued a working certificate in favour of the workman on 18-11-90. His work and conduct remained always satisfactory during the entire period of his employment. It is also pleaded by the workman that the opposite party in an arbitrary and illegal manner has dispensed with the services of the workman from 17-11-98 after close of business hours of the bank without there being any written order in this regard, and also without showing any valid or cogent reasons. It is also pleaded by the workman that the procedure adopted by the opposite party bank in appointing the workman at the post of messenger is a well recognized by the rules of the bank and was in accordance to that rules and that the bank followed the prescribed recruitment rules in making appointment of the workman. It is also pleaded by the workman that the appointment letter dated 28-7-90 was totally legal and valid. Initially every appointment is based on temporary basis and ultimately the same is confirmed by the order of the competent authority. To avoid grant of regular and permanent status in favour of the workman the opposite party deliberately terminated the services of the workman w.e.f. 17-11-90. Lastly it has been prayed that the action of the opposite party bank be set aside and the workman be directed to be reinstated in the service of the bank with full back wages and all consequential benefits.

3. The opposite party has contested the claim of the workman on variety of grounds.

4. It may be pointed out that it would be totally futile exercise on the part of the tribunal in view of the date of termination mentioned in the schedule of reference order and date of termination pleaded by the workman in his statement to deal with the merit of the case. Where as the termination date in the schedule of reference order is 18-11-90, the date of termination mentioned by the workman in his statement of claim is 17-11-98. Thus there is a variance in the date of termination of the services of the workman, therefore, reference on this short ground cannot be answered as the same has become infructuous.

5. Moreover, when according to own pleadings of the workman his services were terminated by the opposite party w.e.f. 17-11-98, how tribunal can held the action of the management either illegal, unjust or unfair when actually no termination took place on date found mentioned in the schedule of reference order that is 18-11-90. It is settled position of law that the Industrial Tribunal or Labour Court cannot travel beyond the scope of the terms of reference order therefore, It is held that the services of the workman were never terminated by the opposite party on 18-11-90. As such workman cannot be held entitled for any relief as claimed by him.

6. In view of above discussions, the first part of the reference order is decided against the workman and in favour of the opposite party.

7. So far as second part of schedule of reference order is concerned there is no pleading on this point, therefore, the same is also decided against the workman for want of proof and evidence.

8. Reference is answered accordingly against the workman and in favour of the opposite party bank.

R. G. SHUKLA, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2007

का.आ. 3278.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट (संदर्भ संख्या 22/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2007 को प्राप्त हुआ था।

[सं. एल-12012/93/2002-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 22nd October, 2007

S.O. 3278.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref No. 22/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the Industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 22-10-2007.

[No. L-12012/93/2002-IR(B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

**BEFORE SHRI R. G. SHUKLA PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, KANPUR**

Industrial Dispute No. 22 of 2003

BETWEEN

Vimal Kishore Bajpai
C/o O. P. Mathur, 117/K/36,
Sarvodaya Nagar,
Kanpur

AND

Dy. General Manager,
State Bank of India,
Zonal Office, Mall Road,
Kanpur- 208001

AWARD

1. Central Government, vide notification No. L-12012/93/2002-IR(B-1) dated 18-7-2003 has referred the following dispute for adjudication to this Tribunal :—

Whether the action of the management of State Bank of India in terminating the services of Sri Vimal Kishor Bajpai w.e.f. August 1991 and thereafter not considering his name for reemployment while reemploying others including the recruitment of fresh hands, is justified? If not what relief the applicant is entitled?

2. Case in short as set up by the workman in his statement of claim is that he was appointed on 1-4-91 by the opp. party at permanent post of sub staff. He was appointed on full pay and allowances as were being paid to other regular and permanent sub staff of the bank. Opposite party continued assuring the workman that he will be regularised in the service but the opposite party did not honour their assurance and he was removed from service with effect from August, 1991. It has also been pleaded by the applicant that he was appointed after holding due selection process by the opposite party bank. Despite the fact that there remained regular and permanent post of messenger, instead of regularising the services of the applicant, opposite party illegally removed him from the service of the bank. Opposite party after removal of the services of the applicant have inducted several fresh hands without affording any opportunity of reemployment.

3. It has been claimed by him that the action of the opposite party is bad in law as the same is in breach of provisions of Sec (s) 25F and 25G of I. D. Act, and rules made thereunder. It has also been pleaded by the applicant that the opposite party did not pay him any notice, notice pay or retrenchment compensation at the time of his removal from the service of the bank. The applicant approached the senior officers of the opposite party and informed that he had been removed in an illegal manner from the services of the bank upon which they assured the applicant he will be adjusted at some place in the bank. In the mean time bank advertised some post in the newspapers inviting application from retrenched employees of the bank. Applicant moved an application pursuant to the said advertisement for his appointment in the service of the bank on 18-11-91 and also appeared in the interview held on 18-11-91 by the bank. His name also figure in the select list. Applicant has also named certain persons who are alleged to have been appointed by the opposite party bank ignoring his legitimate claim. It has also been pleaded by the applicant that the opposite party has breached the provisions of section 25H of Industrial Disputes Act, 1947. Lastly it has been prayed that he be reinstated in the services of the bank with full back wages and all consequential benefits.

4. The claim of the applicant has been contested by the opposite party by filling a detailed reply of the statement of claim. It has been denied by the opposite party that the applicant ever completed 240 days or more in 12 English calendar. The applicant cannot be treated to be a protected workman for the purposes of Sec. 25F or 25H of I. D. Act. In all the applicant had worked for total number of days i.e. 67 days during the period April 1991 to August 1991. During this period the applicant had simply worked for 67 days at Zonal Office Canteen as waterboy/farrash for temporary period. The claim of the applicant is not

tenable as he had never been in continuous employment of the bank within the meaning of Section 25 B of I. D. Act. The claim of the applicant suffers from laches in as much he has raised the dispute after 12 years from the date of his removal therefore the claim is not maintainable as dispute of termination of service raised after 12 years cannot be adjudicated and no relief can be granted to the workman even if the termination of the service is invalid. It has also been alleged that after his interview his name was placed in the wait list at serial no. 197 and his placement was made to be absorbed for a post as and when arises subject to the period of limitation as per bipartite settlement. The wait list exhausted and lapsed on 31-3-97. The claim of the applicant is liable to be rejected being against the provisions of bipartite settlement. The applicant has not come with clean hands. The law of law does not permit an applicant to approbate and reprobate the facts and create self contradictory allegations and contentions and as such the claim is liable to be rejected. The reference made to this tribunal is not maintainable even otherwise as the dispute relating to the status of the applicant by virtue of bipartite settlement can only be made a collective dispute and cannot be deemed as individual dispute under Section 2 (A) of I. D. Act as such on this ground it self the claim is liable to be rejected. It has been denied by the bank that any junior to the applicant was ever appointed by the bank. Lastly it has been alleged by the opposite party that the claim of the applicant is liable to be rejected being devoid of merit.

5. After exchange of pleadings between the parties the case was listed for evidence of parties on repeated dates still the workman did not appear before the tribunal for his evidence. As against it the opposite party bank produced documentary as well as oral evidence of Sri P K Joshi M.W.1. It may be pointed out that he could not be cross examined as none was present from the side of the workman. Thus virtually it is a case in which workman has absolutely failed to substantiate his claim before the tribunal by adducing documentary or oral evidence. On the contrary the management witness has proved the case of the opposite party Bank. Under these circumstances the tribunal is not prepared to believe the claim of the applicant. It is settled principle of law that it is the plaintiff who shall fail before court of law if no evidence is lead on his behalf or by him. Applying the settled provision of law to the facts and circumstances of the instant case, it is held that the workman has failed to prove the case before this tribunal and there appears no reasons why the claim of the opposite party bank be not accepted which stands fully proved by documentary as well as oral evidence.

6. In view of above discussions it is held that the action of the opposite party bank as referred to in the schedule of reference order is neither illegal nor unjust. Consequently it is ordered that the applicant cannot be

granted any relief as claimed by him pursuant to the present reference order.

7. Reference is answered accordingly against the workman.

R. G. SHUKLA, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2007

का.आ. 3279.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नोर्थन रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट (संदर्भ संख्या 50/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2007 को प्राप्त हुआ था।

[सं. एल-41011/61/1995-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 22nd October, 2007

S.O. 3279.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 50/1997) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of Northern Railway and their workmen, which was received by the Central Government on 22-10-2007.

[No. L-41011/61/1995-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI R. G. SHUKLA PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR COURT, KANPUR

Industrial Disputes No. 50 of 1997

In the matter of dispute between :

President,
RCSR Congress (Intuc),
2/236, Namner, Agra

AND

The Assistant Engineer Track,
Northern Railway,
Tundla-U.P.

AWARD

1. Central Government, MOL, New Delhi, vide notification No. L-41011/61/95-IR(B-I) dated 5-3-97 has referred the following dispute for adjudication to this Tribunal :—

“Whether the action of the management of Northern Rly. is justified in terminating the services of Shri Kehari Singh, Shri Chander Pal and Shri Yetender Singh ? If not, to what relief are they each entitled ?

2. The case on behalf of the workers involved in the

present reference order as set up by the union in short is that all the workers were working under Assistant Engineer Track Northern Railway Tundla, the services of whom were determined by the Railway Administration without issuance any charge sheet, without conducting any departmental inquiry or without affording any opportunity of being heard. They raised an industrial dispute before this Tribunal challenging their removal from service. The tribunal in that case answered the award in favour of these workers but liberty was also given to the railway administration to inquiry into the allegation levelled against these workers in accordance with service rules and rules of natural justice. In that award the workers involved in the case were reinstated in the service of the railway administration without back wages. After the award all of them were reinstated in the services of the railway administration. Yet again the railway administration had remove their services by holding an illegal inquiry and that workers were badly denied an opportunity of being defended properly. Being aggrieved by the illegal action of the railway administration where by it has been claimed that they have again been removed from service all of them have again come before the tribunal by raising industrial dispute through their union. On the basis of above pleadings it has been prayed that the action of the railway administration be declared as null and void and they be ordered to be reinstated in the services of the railway administration with full back wages and all consequential benefits.

3. The opposite party railway administration filed its detailed reply contesting the claim of the workers on variety of grounds. It has been denied by the railway administration that during the course of domestic inquiry rules of natural justice or rules governing the disciplinary rules have ever been violated by them. All natural and fair opportunity of defence were provided to the delinquent employees. Charge of obtaining employment in the railway administration by producing fake casual labour cards by the workers stands fully established therefore they were awarded punishment which is fully commensurate with the gravity of charges. Under these circumstances, the claim of the workers is liable to be dismissed.

4. Neither the Union nor the worker ever appeared before the tribunal after 27-6-05 for the reasons best known to them. Registered notices to the parties for appearance in the case were sent by the tribunal 3-7-07 fixing 13-8-07 as date of arguments. None appeared on that date from the side of union and the management. Yet next date for hearing arguments in the case were fixed for 14-9-07. On this date once again none appeared for the union or the workers whereas representative for the management put his appearance and argued the case in detail.

5. At this point of time it would not be out of place to mention that the tribunal is not able to believe the case of the union for two grounds. Firstly there is no mention of

date of award of punishment either in the schedule of reference order or in the pleadings of the union. Same position is with the opposite party. They too have not disclosed the exact date of award of punishment inflicted upon the delinquent employees. Secondly both sides have filed photocopies of certain documents purported to be documentary evidence. It is settled position of law that photocopies of documents cannot be read as evidence in any proceedings before competent court of law. Moreover, even if it is assumed for the sake of arguments, that the action of the railway administration in terminating the services of the workers involved in the reference is neither legal nor justified then a normal question arises for determination as to from which date these workers be awarded relief as claimed by them. Since date of termination of services is wanted in the schedule of reference order as well as in the pleadings of the parties, therefore, reference cannot be answered in favour of the union or the workers involved in the case.

6. For the reasons explained above, tribunal is of the firm opinion that the alleged documentary evidence is of no help to either of the party. From the case file it is also clear that the union has never tried to summon the originals of the records of disciplinary action held against the delinquent employees by the railway administration. It is the workers upon whom heavy burden lies to prove their case before the tribunal by adducing cogent evidence in support of their claim. Workers having failed to discharge their obligation by proving their claim, they cannot be held entitled for any relief as claimed by them through their union. In view of above the oral testimony of worker is of no help.

7. In view of above discussions, it is held that the action of the railway administration in terminating the services of the persons named in the schedule of reference order is neither illegal nor unjust. Consequent they are held entitled to no relief pursuant to the reference, order.

8. Reference is answered accordingly against the Union and in favour of the opposite party.

R. G. SHUKLA, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2007

का.आ. 3280.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचाट (संदर्भ संख्या 60/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2007 को प्राप्त हुआ था।

[सं. एल-12012/76/2000-आई आर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 22nd October, 2007

S.O. 3280 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 60/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the industrial dispute between the management of, State Bank of India, and their workmen, received by the Central Government on 22-10-2007.

[No. L-12012/76/2000-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

**BEFORE SHRI R. G. SHUKLA PRESIDING
OFFICER CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL CUM-LABOUR COURT, KANPUR**

Industrial Disputes No. 60 of 2000

In the matter of dispute between :

Mahendra Kumar Srivastava
son of Shivrajbati Srivastava
House No. 13/215 Civil Lines
Kanpur.

AND

The Chief General Manager
State Bank of India
Local Head Office
Motimahal Marg
Lucknow.

AWARD

1. Central Government, MOL, New Delhi, vide notification No. L-12012/76/2000/IR(B.I) dated 13-7-2000 has referred the following dispute for adjudication to this Tribunal :—

Whether the action of the management of State Bank of India Kanpur in terminating the services of Sri Mahendra Kumar Srivastava w.e.f. 1-6-81 is justified ? If not what relief he is entitled ?

2. The case as set up by the employee concern in his statement of claim is that he was appointed by the bank at its Mall Road Branch Kanpur and that prior to his appointment all procedure were adopted by the bank. He was not issued any appointment letter under the garb of unfair labour practice. The work of the workman ever remained satisfactory. As a device of exploitation of human labour, the opposite party were in habit of utilizing the services of workman and thereafter engaged another person in his place for performing the same work, with a view to deprive the workman from attaining the status of regular

and permanent employee. By using unfair labour practice the opposite party removed from service the workman w.e.f. 10-6-81. After removal of the service the opposite party inducted several fresh hands in their employment ignoring the legitimate right of the workman. It has also been pleaded by the workman that he was interviewed by the opposite party bank in response to his application submitted on the basis of advertisement got published in the news papers advising and inviting applications from such temporary workers who had at any point of time worked with the bank. He also pleads that his name figure in the select list posted by the bank on the notice board, still he has not been appointed by the opposite party. The workman repeatedly approached the authorities of the bank in this regard but all in vain. On the basis of above pleadings it has been prayed by the workman that the action of the opposite party be declared unfair and he be reinstated in the service of the bank with full back wages and seniority.

2. The claim of the workman has been vehemently denied by the opposite party bank in their reply on variety of grounds and the opposite party bank has claimed that the claim of the workman is liable to be rejected being devoid of merit.

3. The contesting parties have adduced oral as well as documentary evidence in support of their claim and counter claim.

4. Tribunal has heard the arguments of the parties at length and have also gone carefully through the record. Admittedly the workman has not been given any appointment letter by the opposite party bank and this fact has been admitted by him in his pleadings as well as in his evidence. Moreover, there is variance in the date of termination found mentioned in the schedule of reference order and in para 3 of the statement of claim. Whereas reference order speaks date of termination as 1-6-81, statement of claim of the workman shows that he was terminated w.e.f. 10-6-06. In view of this admitted position, the tribunal is of the firm opinion that workman has never been removed from the service of the bank 1-6-81 as mentioned in the reference order. Even otherwise an employee who has not been issued any letter of appointment after subjecting him through regular selection process has got no right to claim appointment in public employment. It is also settled legal position that Labour Courts/Industrial Tribunals should not be used as a measure for providing back door entry in public employment. Mere completing 240 days of continuous service also does not confer any legal right in favour of a workman unless it pleaded and proved that the provisions regulating the service conditions of the employee have been flouted. Neither in the statement of claim nor in the evidence of the workman, there is mention of breach of provisions of service conditions under which workman

was covered. Therefore, the workman cannot be granted any protection of the provisions of the I.D. Act in the instant case. The claim of the workman is absolutely devoid of merit and is liable to be rejected holding that he is not entitled for any relief as claimed by him.

5. In view of above discussions, it is held that the workman is not entitled for any relief pursuant to the present reference order as claimed by him. Reference is therefore decided against the workman and in favour of the opposite party.

R. G. SHUKLA, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2007

का.आ. 3281.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अवध ग्रामीण बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट (संदर्भ संख्या 26/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2007 को प्राप्त हुआ था।

[सं. एल-12012/189/2002-आई आर(बी-1)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 22nd October, 2007

S.O. 3281.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2003) of Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the industrial dispute between the management of Awadh Gramin Bank, and their workman, received by the Central Government on 22-10-2007.

[No. L-12012/189/2002-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

**BEFORE SHRI R. G. SHUKLA, PRESIDING
OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, KANPUR**

Industrial Dispute No. 26 of 2003

In the matter of dispute between :

Ajai Pal Singh
son of late Mahipal Singh
House No. 115 Sarai Mita

Panki, Kanpur.

And

The Chairman
Awadh Gramin Bank
A-2/46 Vijay Khand Gomti Nagar
Lucknow.

AWARD

1. Central Government, MOL, New Delhi, vide notification No. L-12012/189/2002/IR(B-I) dated 24-7-2003 has referred the following dispute for adjudication to this tribunal :—

Kya Awadh Gramin Bank Lucknow ke Prabandhan Dwara Karmkar Sri Ajai Pal Singh Putra Mahipal Singh ko 1-8-84 se sewa se Nishkashit Karna Nyayochit hai ?
Yadi nahi to sambandhit karamkar kis anutosh ka Haqdar hai.

2. Briefly stated facts of the case as set up by the workman in his statement of claim is that he was employed by the opposite party on 7-7-82 as peon and he had been continuously working with the opposite party without stigma till 31-7-84. Throughout entire service period the work and conduct of the workman remained outstanding and satisfactory. Nothing is on record to justify his termination from the service and the applicant could not be deemed to be temporary employee and as such the termination of his services under the garb of service rules and regulations cannot be held to be legal and justified. Termination of his services by the opposite party without making payment of retrenchment compensation is in breach of provisions of Section 25F of the Act. Therefore termination of his service is bad in law, and in violation of the provisions of Article 14 and 16 of the Constitution of India. Since the applicant had been falsely implicated in a criminal case and he was acquitted in appeal and thereafter the workman informed the bank that he had been acquitted honourably therefore, he may be taken back in the employment of the bank whereupon he was verbally assured by the authorities of the opposite party that he will be taken back in the service shortly but nothing fruitful came in the matter. It has also been pleaded by the workman that other employees who had been working in the bank on the same terms and conditions as were applicable upon him were made permanent and their services have been regularised by the opposite party bank but the application is being deprived off. In the end on the basis of above pleadings, it has been prayed by the workman that he be reinstated in the service of the bank with full pay and consequential benefits attached with the post.

3. The claim of the workman has been opposed by the opposite party on a number of grounds inter alia that

the workman was engaged as part time temporary sweeper on casual basis for sweeping the branch and as such he was paid wages for actual hours of for working days. It has been admitted by the opposite party that the workman worked as sweeper on part time basis during the period 11-8-82 to 31-7-84 and at present there is no vacancy of peon in the bank workman did not hold any regular and permanent post in the in any cadre whatsoever and that the workman was engaged only for a period of 2 hours in a day and he never worked on full time basis in the bank, the workman had worked on day to day basis for short intervals. he was never issued any appointment letter therefore question of termination of his service does not arise at all. Since the workman had been a part time employee and there had not been any vacancy of sweeper in permanent post. Like wise no letter terminating the services of the workman was ever issued by the bank in favour of the workman. He had never completed 240 days or more in any calendar year preceding 12 months from the date of alleged termination. Opposite party had never terminated the services of the workman w.e.f. 1-8-84 as claimed by him. In various circulars of the bank issued from time to time it has been reiterated that the sweepers/peons/messengers should not be appointed on regular basis in any regional rural bank. Recruitment in the bank is done as per the set guidelines of the Govt. vide which candidates are sponsored by the Regional Employment Exchange and the workman was not subjected to such exercise and he has given a misstatement to misguide the Tribunal. The claim of the workman is nothing but to obtain employment in the bank through back door entry which is not permissible law. Claim of the workman is also not covered under the provisions of Sec(s) 25F, 25G and 25H of the Act and rules made thereunder. In the end it has been prayed that the claim of the workman is liable to be rejected being devoid of merit.

4. The workman in support of his claim has filed his own affidavit together with photocopies of certain documents and have also examined himself as W.W. 1 in support of his claim. On the contrary the opposite party vide application dated has filed certified copy of award given by U.P. Labour Court No. 2, Kanpur.

5. In his examination in chief the witnesses has admitted that he worked with the opposite party during the period 7-7-82 to 31-7-84 and after 31-7-84 he was not allowed to perform his duties. He goes on to state that at the time of termination of his services he was not paid notice or notice pay or retrenchment compensation. Some application of the workman was received directly and some were sent by him through post. In his cross-examination the witness has admitted the fact that he used to be paid his wages through vouchers and that he had never been issued any appointment letter by the bank. He was interviewed by the bank before 4 or 6 days of his appointment. Witness has

denied the suggestion that he had never worked as peon in the bank.

6. Tribunal has heard the arguments of the contesting parties at length and have also perused the entire file of the case carefully and finds that the workman has not been able to establish his claim that he was ever appointed by the bank on the basis of some appointment letter. Workman has also failed to prove the claim that he worked continuously for a period 240 days in any calendar year or that he worked as peon. Photocopies of certain documents have also been filed by the workman which according to settled position of law are not admissible in evidence. Even a daily rated worker has no right to claim appointment on regular and permanent basis as his services comes to an end each day after close of business hours. Under these circumstances it cannot be believed that he worked continuously with the opposite party on any classified post. When he was never appointed by the opposite party bank by order in writing question of termination of his services by the bank does not arise at all and he cannot be allowed for protection of the provisions of Industrial Disputes Act, 1947. The Hon'ble Supreme Court of India in a leading case *State of Karnataka versus Uma Devi* has clearly propounded law of the land that no one should be allowed to be in the service of any establishment without resorting recruitment rules as the same would amount to back door entry in the public employment.

7. The Hon'ble Supreme Court of India in the case of *Himanshu Kumar Vidyarthi and others versus State of Bihar* and another reported in FLR 1997 (76) 217 has held as under :

Admittedly, they were not appointed to the posts in accordance with the rules but were engaged on the basis of need of the work. They are temporary employee working on daily wages. Under these circumstances their disengagement from service cannot be construed to be a retrenchment under the Industrial Disputes Act. The concept of retrenchment therefore cannot be stretched to such an extent so as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary.

8. The law laid down by the Hon'ble Supreme Court (supra) apply with full swing to the facts and circumstances of the case in hand, therefore, since the case of the workman is not a case of retrenchment therefore, he cannot be granted any relief as has been claimed by him.

9. For the reasons discussed above, it is held that the action of the management in terminating the services of the workman w.e.f. 1-8-84 cannot be held either illegal or unjustified. As a result of the same it is further held that the applicant workman is not entitled for any relief as claimed by him in pursuance of the present reference.

9. Reference is decided accordingly against the workman and in favour of the opposite party bank.

R. G. SHIKLA, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2007

का.आ. 3282.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रामगढ़ शहोरी क्षेत्रीय ग्रामीण बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 204/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2007 को प्राप्त हुआ था।

[सं. एल-12012/142/1994-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 22nd October, 2007

S.O. 3282.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 204/1995) of Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur, as shown in the Annexure, in the Industrial Dispute between the management of Ramgarh Sehore Kshetriya Gramin Bank, and their workmen, received by the Central Government on 22-10-2007.

[No. L-12012/142/1994-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, JABALPUR

No. CGIT/LC/R/204/95

Presiding Officer : Shri C. M. SINGH

Shri Mohandas Vaishnav,
109, Laxmi Nagar, Ujjain (MP) Workman/Union

Versus

The Chairman,
Ramgarh Sehore Kshetriya Gramin Bank,
Head Office, Sehore (MP) Management

AWARD

Passed on this 24th day of September-2007

1. The Government of India, Ministry of Labour vide its Notification No.L-12012/142/94-IR(B-I) dated 30-11-95 has referred the following dispute for adjudication by this tribunal :—

“Whether the action of the management of Chairman, Rajgarh Sehore Kshetriya Gramin Bank, Head Office Sehore in terminating the services of Sh.Mohandas Vaishnava w.e.f. 31-12-92 is justified or not? If not, to what relief the workman is entitled?”

2. The case of workman Shri Mohandas Vaishnava in brief is as follows. That since 1987, he was posted as

clerk-cum-cashier at Rajgarh Sehore Kshetriya Gramin Bank (here-in-after referred as management). At the time of his appointment, he was posted at Bersia Teh. Sarsingarh branch of the Bank. In the year 1990, he was posted at Kajlas branch of the Bank, Teh. Ashta, Distt. Sehore. Vide order dated 21-12-89 of the Chairman and the Disciplinary Authority of the management, the workman was suspended with immediate effect for taking disciplinary action against him. On 13-3-90, he was served with a charge sheet in which 17 charges were levelled against him in three parts. He was charged for making payment of lesser amount to the beneficiaries of the Bank than the actual amount payable to them, misbehaviour with Smt.Sushila R/o village Kajlas, misbehaviour with Shri M. L. Gupta, the then Branch Manager, leaving the place of work without prior permission, for remaining absent without prior permission and for leaving headquarter inspite of specific directions etc. The workman replied the chargesheet denying all the charges levelled against him. Shri K.L.Sharma was appointed as Enquiry Officer for conducting departmental enquiry against the workman and the enquiry began on 6-6-90. After conclusion of the enquiry, vide order dated 31-12-92, the workman was punished with the punishment of termination of his services. The said order of the management is improper and illegal because the departmental enquiry was not conducted properly and legally against the workman. The workman was very severely punished overlooking that the punishment imposed on him is not proportionate to his act of misconduct. Because the departmental enquiry was not conducted against the workman properly and legally, therefore the order of termination of workman from services is bad in law and liable to be set aside. It is prayed that the management be directed to reinstate the workman in service with all back wages and other benefits.

3. The management has contested this reference and filed their Written Statement. Their case in brief is as follows. It is admitted to the management that workman Shri Mohandas Vaishnava was posted as clerk-cum-cashier in the management Bank since 1987, at the time of his appointment, he was posted at Bersia, Teh.Sarsingarh branch of the Bank and in 1990, he was posted in Kajlas branch, Teh. Ashta, distt. Sehore. It has been pleaded by the management that the workman shri Vaishnava was suspended on 21-11-89 and was served with a chargesheet on 13-3-90 but it is not correct to say that 17 charges were levelled against him in 3 parts. Actually 17 charges were levelled against him in four parts. With other charges, he was also charged for keeping the keys of cash of Kajlas branch with him for several days unauthorisely which was the main charge. It has been denied in the Written Statement that departmental enquiry was not conducted against the workman legally and properly; rather it is pleaded that the DE was conducted against the workman legally and properly. All the charges levelled against the workman were

proved. After going through the report submitted by the Enquiry Officer and considering the nature of the charges, the Disciplinary Authority prescribed the punishment of workman's termination from service which was approved by the Divisional Director. Considering the misconduct of the workman, due punishment has been awarded to him and the workman is not entitled to any relief.

4. On 15-9-06, the following issues were framed by me upon the pleadings of the parties :—

- (i) Whether the DE conducted by the management against the workman is proper and legal? If not, whether the management is entitled to prove the misconduct of the workman?
- (ii) To what relief, if any, is the workman entitled?

5. Workman Shri Mohandas Vaishnava in order to prove his case examined himself.

6. The management examined Shri Kishanlal Sharma, the then Manager, Gagorni branch, Teh. Jeerapur, Distt. Rajgarh in support of their case.

7. The management filed the original record of DE conducted against the workman.

8. In this reference case, Issue No.1 has been decided as preliminary issue.

FINDINGS

Issue No. 1:—I have heard Shri Shailesh Mishra, Advocate for workman and Shri A.K. Shashi, Advocate for management. I have very carefully gone through the entire evidence on record. The findings on issue No. 1 has been recorded by me on separate sheets of paper on 9-7-07. It was held in the findings on Issue No.1 that the Departmental Enquiry conducted by the management against the workman is proper and legal and thus Issue No. 1 has been decided in the affirmative in favour of the management and against the workman. The findings on Issue No.1 shall form the part of this award.

9. Issue No. 2 : It has been submitted by the learned counsel for the workman that very severe punishment has been imposed on the workman and the said punishment is not proportionate to the act of misconduct of the workman. He prayed that a lenient view be taken by this tribunal and the order of termination of the workman from the services be set-aside and the management be directed to take a lenient view and award the punishment proportionate to the act of misconduct of the workman. Against the above, the learned counsel for the management submitted that the management has lost confidence on the workman that he worked sincerely, honestly and faithfully. He also submitted that the Bank is an institution where complete integrity and honesty is required. The workman was holding an important post of clerk-cum-cashier and looking to the circumstances of the case and the charges proved against

the workman, he has been rightly punished. The main charge amongst 17 charges with which the workman was charged and which were fully proved against him in the DE was of keeping the keys of cash of Kajlas branch with him for several days unauthorisely. I am of the view that considering the charges proved against the workman, the management has rightly punished the workman with the order of termination of his services. The facts and circumstances of the case indicate that the management has lost confidence on the workman that he works sincerely, honestly and faithfully. It has been rightly submitted by the learned counsel for the management that the management is a Banking institution where complete honesty and integrity is required and that the workman was holding an important post of clerk-cum-cashier. I am of the considered opinion that under these circumstances, the management cannot keep the person in services whose integrity is doubtful. It is, therefore, held that the workman is not entitled to any relief. Issue No.2 is decided in the negative in favour of the management and against the workman accordingly.

10. In view of my findings on Issue No.1 & 2, the award deserves to be passed in favour of the management and against the workman with costs. The award is passed in favour of the management and against workman with costs holding that the action of management of Chairman, Rajgarh Sehore Kshetriya Gramin Bank, Head Office Sehore in terminating the services of Sh. Mohandas Vaishnava wef 31-12-92 is justified and consequently the workman is not entitled to any relief.

11. Let the copies of this award be sent to the Government of India, Ministry of Labour and Employment as per rules.

C. M. SINGH, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2007

का.आ. 3283.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डी. डी. ए. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नई दिल्ली नं. 2 के पंचाट (संदर्भ संख्या 73/2005 और 72/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2007 को प्राप्त हुआ था।

[सं. एल-42012/198/2004-आई आर (सी-II)]

[सं. एल-42012/197/2004-आई आर (सी-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 22nd October, 2007

S.O. 3283.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.

No. 73/2005 and 72/2005) of the Central Government Industrial Tribunal-Cum-Labour Court No. 2, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of DDA and their workman, which was received by the Central Government on 22-10-2007.

[No. L-42012/198/2004-IR (C-II)]

[No. L-42012/197/2004-IR (C-II)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, NEW DELHI

I. D. No. 73/05 and 72/2005

Presiding Officer : R. N. RAI

IN THE MATTER OF :

Shri Bare Lal & others,
D. D. A. Mazdoor Union,
C/o Room No. 95, Barrack No. 1/10,
Jamnagar House, Sahajahan Road,
New Delhi-110011.

Versus

The Secretary,
Delhi Development Authority,
Vikas Sadan, INA Market,
New Delhi.

AWARD

The Ministry of Labour by its letter No. L-42012/198/2004 IR (CM-II) Central Government Dt. 2-8-2005, L-42012/197/2004 IR CM-II) Central Government Dt. 2-8-2005 has referred the following points for adjudication.

I. D. Nos. 73/2005 and 72/2005 involve common dispute. These are connected cases and they can be adjudicated by common award. The grounds of both the cases mentioned above are the same. So both the above mentioned cases are taken up together.

The points run as hereunder :—

- (1) "Whether the action of the management of Delhi Development Authority in transferring the workmen, S/Sh. Bare Lal, Sant Ram, Chhote, Krishan and Kali Charan, Malis/Security Guards to Municipal Corporation of Delhi is legal and justified? If not, to what relief the workmen are entitled and from which dated?
- (2) "Whether the action of the management of Delhi Development Authority in transferring the workmen, S/Sh. Hoshier Singh, Siya Ram, Hem Nath, Mange Singh & Sh. Pitam Singh, all Pump

Operators to MCD is legal & justified? If not, to what relief these workmen are entitled and from which date."

The workmen applicants have filed claim statement. In the claim statement it has been stated that the work for which they were employed was not transferred to M.C.D. but the management of D.D.A. arbitrarily transferred these workmen to M.C.D. without following the procedure of transfer and the Junior persons were retained in D.D.A.

That the management of D.D.A. did not follow the policy of last-cum-first go as per Section 25G of Industrial Disputes Act 1957.

That in M.C.D. the workmen have not been getting the facilities of DDA and also denied the better facilities of M.C.D. workers.

That the transfers of these workmen from D.D.A. to M.C.D. are discriminatory and also violate provisions of natural justice.

That the action of the management of Delhi Development Authority in transferring the workmen S/Shri Bare Lal, Sant Ram, Chotte, Krishan and Kali Charan, Malis/Security Guards to Municipal Corporation of Delhi & S/Sh. Hoshier Singh, Siya Ram, Hem Nath, Mange Singh & Sh. Pitam Singh, all Pump Operators to MCD is illegal and unjustified.

The Management has filed written statement. In the written statement it has been stated that the claim of the workmen is not maintainable and the workmen have no locus standi file the to statement of claim in the present form. That the statement of claim is time barred.

That there is no Industrial Dispute lies between the management and its workmen and the statement of claim is devoid of any merit and has no cause of action against the management hence liable to be dismissed under order 7 Rule 11 of the CPC.

That the contents of Para No.1 of the Statement of Claim is a matter of record hence needs no reply.

That the contents of para No.2 is matter of record and the workman were working in the Horticulture Division.

That the services of the workmen referred herein above have been transferred to Municipal Corporation of Delhi by mutual understanding between the MCD & DDA.

That the workmen referred to were transferred under the mutual understanding between the DDA and the MCD and it is submitted that the procedure of transfer was followed as per the norms and the precedent and it is wrong and denied that there is any such procedure where the Senior workmen should be retained and Junior person should be transferred to M CD. The names of the junior persons in the category of Pump Operator are matter of

record and needs to be verified also.

That the contents of Para No.5 are matter of record and the seniority of the workmen is irrelevant in the cases of transfer since transfer is the prerogative of the employer.

That the contents of Para No.6 are wrong and denied and since the DDA and MCD are autonomous bodies and the workmen in both the organization are getting similar facilities and no better as alleged in the statement of claim:

That the contents of Para No. 7 are wrong and denied. It is reiterated that the transfers of these workmen is neither discriminatory nor unlawful but under the mutual understanding between the DDA and MCD.

It is reiterated again that the transfer of the workmen is lawful and justified and according to the policy of Mutual understanding between the DDA and MCD.

The workmen applicants have filed rejoinder. In the rejoinder they have reiterated the averments of their claim statement & have denied most of the paras of the written statement. The management has also denied most of the paras of the claim statement.

Evidence of both the parties has been taken.

Heard arguments from both the sides & perused the papers on the record.

It was submitted from the side of the workmen that they were employed by the management of DDA for the work of Malis/Security Guards & Pump Operators. The services of all the workmen were transferred w.e.f. 20-9-2002. management of DDA arbitrarily transferred these workmen to MCD without following the procedure of transfer and junior persons were retained in DDA. The management did not follow the policy of "first come last go" as per section 25 - G of the ID Act, 1947 & also not served notice for change of service conditions as prescribed in section 9 (A) of the ID Act, 1947.

It was submitted that in MCD, the workmen have not been getting the facilities of DDA and also denied the better facilities of MCD workers.

The mgt. witness has admitted in his cross-examination that the workmen were recruited for the work of DDA and they had been performing their duties with DDA before transfer to MCD. It has also been admitted by the MW that no notice of change of service conditions have been given to them. The management has also admitted that in DDA the ACP after 12 years were given to the Chowkidars/Malis in the pay scale of Rs.3050- 4590. The mgt. witness has further admitted that after completion of 50 years of DDA the employees and the officers working with the DDA are allowed one month's wages along with allowances.

It has also been admitted by the mgt. that no appointment letter was issued to the workmen when these workmen were transferred to MCD.

It was submitted from the side of the management that the statement of claim of the workmen are not maintainable. The workmen have no locus-standi to file statement of claim. The statement of claim is time barred. The workmen have no cause of action against the mgt. The claim is liable to be dismissed under order 7 Rule 11 of CPC.

It was further submitted that the workmen have been transferred through proper procedure and seniority of the workmen is irrelevant in the present case. The principle of "first come last go" is not applicable in the present case. The transfer is the prerogative of the employer.

The MCD & DDA are two different Central undertakings/establishments of the Central Government. The mgt. witness has admitted that the facilities available in DDA are not available in MCD. The mgt. has also admitted that seniority is not relevant in the present case. Transfer is the prerogative of the employer.

Transfer is the prerogative of the employer no doubt but it should not be to the prejudice of the employees. Seniority cannot be undermined even in transfer cases if no adverse circumstance exists.

In the instant case the mgt. has admitted that these workmen have been transferred from DDA to MCD without considering their seniority.

DDA and MCD are autonomous bodies no doubt. They are run under the authority of the Central Government but MW1 has admitted that all the facilities of DDA are not available in MCD.

In case of exigencies or additional work the employees of one autonomous body can be transferred to another autonomous body but in such circumstances seniority should not be undermined as in such circumstances there would be infringement of section 25 - G of the ID Act, 1947.

The workmen have been transferred to MCD from DDA permanently, so they have been constrained to join another department. In the circumstances juniors cannot be retained by the mgt. There cannot be any prerogative of the employer for passing arbitrary, illegal and discriminatory orders. The juniors cannot be retained in DDA to obtain better facilities and the seniors cannot be transferred to MCD to deprive them of the better facilities available in DDA.

Section 9 (A) of the ID Act, 1947 provides that in such circumstances a notice is mandatory when service conditions of the workmen are changed. The service conditions of the workmen have been changed as the same service conditions are not available in MCD as has been admitted by the mgt. It has been provided in IVth Schedule

that a notice is required to be served when there is withdrawal of any customary concern, privilege or change wage/compensatory and other allowances. In the instant case it is admitted that there are certain additional facilities available in DDA which are not available in MCD which has been mentioned above, thus, the workmen by this arbitrary transfer have been denied of the scales after 12 years of working in the DDA and one month's wages along with allowances after completion of 50 years of the DDA.

It has been held in (1996) 6 SCC 275 that when prejudice is caused to a workman and the service conditions are changed, a notice is required to be served on the workmen or their union. The mgt. has, no doubt, prerogative to transfer the workmen from DDA to MCD but a notice is mandatory in such circumstances. After giving notice and considering the representations of the workmen, the mgt. should have effected the transfer from DDA to MCD. The mgt. has acted arbitrarily and illegally. The workmen have not been given opportunity to make representations. Retaining of the juniors and transferring of seniors is arbitrary and illegal. Discretion should not amount to vicious discrimination. The order dated 20-09-2002 by which the workmen have been transferred from DDA to MCD is liable to be set aside and it is set aside.

The mgt. should take the workmen back in DDA and after considering the representations, afresh orders may be made in the light of the above observations. The workmen are entitled to a cost of Rs.2,000 for dragging them in un-necessary litigation by way of compensation.

The references are replied thus :—

- (1) The action of the management of Delhi Development Authority in transferring the workmen, S/Sh. Bare Lal, Sant Ram, Chhote, Krishan and Kali Charan, Malis/Security Guards to Municipal Corporation of Delhi is neither legal nor justified. The mgt. should take the workmen back in DDA and after considering the representations, afresh orders may be made. The workmen are entitled to a cost of Rs.2,000/- for dragging them into un-necessary litigation compensation for change in service conditions.
- (2) The action of the management of Delhi Development Authority in transferring the workmen, S/ Sh. Hoshiar Singh, Siya Ram, Hem Nath, Mange Singh & Sh. Pitam Singh, all Pump Operators to MCD is neither legal nor justified. The mgt. should take the workmen back in DDA and after considering the representations, afresh orders may be made. The workmen are entitled to a cost of Rs.2, 000/- for dragging them into un-necessary litigation compensation for change in service conditions.

The awards are given accordingly.

R. N. RAI, Presiding Officer

Date : 16-10-2007.

नई दिल्ली, 22 अक्टूबर, 2007

का.आ. 3284.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. ई. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 159/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2007 को प्राप्त हुआ था।

[सं. एल-22012/196/1996-आई आर (सी-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 22nd October, 2007

S.O.3284.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 159/1997) of the Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SECL and their workmen, which was received by the Central Government on 22-10-2007.

[No. L-22012/196/1996-IR (C-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, JABALPUR

No. CGIT/LC/R/159/97

Presiding Officer : Shri C. M. SINGH

The General Secretary,
M. P. Koyla Khadan Driver and
Operator's Sangh,
Post Korea Colliery,
Distt. Surguja (MP)

Workmen/Union

Versus

The Sub Area Manager,
Lorea Colliery of KSECL,
Post Korea Colliery,
Distt. Surguja (MP)

Management

AWARD

Passed on this 28th day of September, 2007

1. The Government of India, Ministry of Labour vide its Notification No.L-22012/196/96-IR(C-II) dated 5-6-97 has referred the following dispute for adjudication by this tribunal :—

“Whether the action of the management of Korba Colliery of SECL Chirimiri Area in not promoting Sh.Kailash and Sh.Harjeet to the post of Driver-cum-Mechanic, Cat.VI on the ground that they had not passed class eighth, is legal and justified? If not, to what relief are the workmen entitled and from which date?”

2. Vide order dated 13-5-04, the reference proceeded exparte against workmen/Union. The workmen/Union did not file any statement of claim.

3. Against the above, the management filed their Written Statement. Their case in brief is as follows. Workman Shri Kailash was initially appointed with effect from 1-1-1981. That the educational qualification as per service record is "Nil". On successful completion of training period of 6 months, workman Shri Kailash along with other trainee Drivers of West Chirimiri Colliery has been placed as Driver Category V in monthly cadre vide office order dated 28-10-93. During the year 1993, there was some vacancy of driver cum mechanic and accordingly a committee was constituted by the competent authority to examine the cases of departmental candidates by conducting test and interview for promotion from Driver to the post of Driver-cum-mechanic, Cat-VI. On receipt of bio-data and other details from the unit, the drivers having requisite qualification were called to appear before DPC. The name of workman Shri Kailash appeared at S1.No.21 and of workman Harjeet Singh at S1.No.26 of the Letter No. 5326 dated 1-9-96. Workman Shri Kailash was interviewed but workman Shri Harjeet Singh could not be interviewed as he did not produce the requisite certificate. The promotion of driver cum mechanic is to be done on the basis of aptitude-cum-seniority-cum-merit. The name of workman Shri Kailash was also in the panel but could not be promoted due to shortage of vacancy. On the basis of recommendation of the selection committee, workman Shri Harjeet Singh along with others of Chirimiri area were promoted to the post of Driver Category V vide office order No. 8136 of September 1982. The complete Bio-data of both the workmen are given below :—

	Bio-data of Shri Kailash Korea Colliery.	Bio-data of Shri Harjit Singh, Korea Colliery.
1. Father's Name	Shri Budhu	Shri Sukhdeo \$
2. Designation	Motor/Driver Cat. V	Motor/Driver Cat. V
3. Form R. No.	DR/402	DR/596
4. C. M. P. F. No.	A/4/60/147 Pen	A/4/60/723 Pen
5. Date of birth	16-03-1958	02-04-1958
6. Date of appointment	01-01-1981	
7. Date of coming in the present grade	06-07-1985 as per service record	24-09-1982 as per Driver Cat V as service record
8. Present Basic	Rs. 89.34 Per day	Rs. 101.20 (SSLU) per day.
9. Educational qualification as per service record.	Nil	Nil
10. Last 3 years attendance (as per Bonus Register)	1993 1994 1995 297 302 310	1993 1994 1995 291 289 298

In view of the above facts and circumstances, the action of the management of Korea Colliery Chirimiri Area in not promoting Shri Kailash and Harjeet Singh to the post of Driver cum mechanic Category VI is legal and justified.

4. As the case proceeded exparte against the workmen/Union, no evidence has been adduced on behalf of workmen/Union. Against the above, the management filed affidavit of Shri Arvind Kumar Singh, the management's witness, then working as Sub Area Manager in West Chirimiri group.

5. I have heard Shri A.K.Shashi, Advocate for the management. I have very carefully gone through the evidence on record.

6. The case of the management is fully established from the uncontroverted and unchallenged affidavit of Shri Arvind Kumar Singh, then working as Sub Area Manager in West Chirimiri group. Therefore the reference deserves to be decided in favour of the management and against workmen without any order as to costs.

7. In view of the above, the reference is decided in favour of the management and against the Workmen/Union without any order as to costs holding that the action of the management of Korba Colliery of SECL, Chirimiri Area in not promoting Sh. Kailash and Sh. Harjeet to the post of Driver-cum-Mechanic, Cat. VI on the ground that they had not passed class eighth, is legal and justified and therefore the workmen are not entitled to any relief.

8. Let the copies of award be sent to the Government of India, Ministry of Labour and Employment as per rules.

C. M. SINGH, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2007

का.आ. 3285.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. ई. सी. एल. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 140/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2007 को प्राप्त हुआ था।

[सं. एल-22012/90/1996-आई आर (सी-11)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 22nd October, 2007

S.O. 3285.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 140/1997) of the Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SECL and their workmen, which was received by the Central Government on 22-10-2007.

[No. L-22012/90/1996-IR (C-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, JABALPUR**

No. CGIT/LC/R/140/97

Presiding Officer : Shri C. M. SINGH

The General Secretary,
Rastriya Koyla Khadan
Mazdoor Sangh (INTUC),
Johilla Area, Near Bus Stand,
Post Nowrozabad,
Distt. Shahdol (MP)

Workmen/Union

Versus

The General Manager,
Johilla Area, SECL,
Post Nowrozabad Colliery,
Distt. Shahdol (MP)

Management

AWARD

Passed on this 27th day of September, 2007

1. The Government of India, Ministry of Labour vide its Notification No.L-22012/90/96-IR(C-II) dated 20-5-97 has referred the following dispute for adjudication by this Tribunal:—

“Whether the action of the management of SECL, Johilla Area in deducting 10 % of the arrears amount, paid to the workers in accordance with conciliation settlement dated 4-2-95 and paying the deducted amount to General Secretary, M.P. Koyla Mazdoor Sabha (HMS) and Secretary (CEC), National Colliery Workers Federation (NLO) is legal and justified? If not, to what relief the concerned workmen are entitled?”

2. Vide order dated 16-2-06 on the order-sheet of this reference proceeding, the case proceeded ex parte against the workmen/Union as inspite of sufficient service of notice on the workmen/Union, the workmen/Union failed to put in appearance and to file statement of claim.

3. Vide order dated 9-7-07 on application moved by management, the Written Statement filed by the management was cancelled and also the evidence adduced on behalf of management.

4. It is the case of no evidence by the parties.

5. I have heard Shri A.K.Shashi, Advocate for the management.

6. As it is the case of no evidence by the parties, the reference deserves to be decided in favour of the management and against the workmen/Union without any orders as to costs.

7. In view of the above, the reference is decided in favour of the management and against the workmen/Union without any orders as to costs holding that the action of management of SECL, Johilla Area in deducting 10 % of the arrears amount, paid to the workers in accordance with conciliation settlement dated 4-2-95 and paying the deducted amount to General Secretary, M.P. Koyla Mazdoor Sabha (HMS) and Secretary (CEC), National Colliery Workers Federation (NLO) is legal and justified and consequently the workmen are not entitled to any relief.

8. Let the copies of this award be sent to the Government of India, Ministry of Labour & Employment as per rules.

C. M. SINGH, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2007

का.आ. 3286.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 04/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2007 को प्राप्त हुआ था।

[सं. एल-22012/308/2000-आई आर. (सी-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 22nd October, 2007

S.O. 3286.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 04/2002) of the Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Ghorawari Colliery of WCL and their workmen, which was received by the Central Government on 22-10-2007.

[No. L-22012/308/2000-IR (C-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, JABALPUR**

No. CGIT/LC/R/4/02

Presiding Officer : Shri C. M. SINGH

The General Secretary,
M. P. K. K. M. P (HMS),
Ghorawari colliery Branch,
P.O. Ghorawari
Chhindwara

Workman/Union

Versus

The Manager,
Ghorawari Colliery of WCL,
P.O. Ghorawari
Chhindwara

Management

AWARD

Passed on this 4th day of October, 2007

1. The Government of India, Ministry of Labour vide its Notification No. L-22012/308/2000-[IR (CM-II)] dated 19-12-2001 has referred the following dispute for adjudication by this Tribunal :—

“Whether the action of the management of Ghorawari Colliery of WCL, Kanhan Area, PO: Ghorawari, Distt Chhindwara (MP) in not promoting Sh. Shaheed Khan S/o Noor Khan as Fitter Helper Cat IV w.e.f. December 1992 is legal and justified? If not, to what relief the workman is entitled to?”

2. Vide order dated 7-4-05, the reference proceeded exparte against the workman/Union. No statement of claim has been filed on behalf of workman/Union.

3. The management filed their Written Statement. The case of the management in brief is as follows. Workman Shri Shaheed Khan was offered appointment to the post of Badli Tub Loader/Temporary Departmental Piece Rated vide order No. 84-67 dated 16-9-84. While working on the said post as Haulage Khalasi, he was regularized on the post Haulage Khalasi in Category-III. The workman was never engaged as Mechanical Fitter in Cat-IV. Therefore he was not entitled to be regularised as Mechanical fitter in Cat-IV and the present dispute has no merits.

4. As the case proceeded exparte against the workman/Union, no evidence has been adduced on behalf of workman/Union. The management has filed affidavit of their witness Shri Lalji in support of their case.

5. I have heard Shri A.K. Shashi, Advocate, the learned counsel for the management and I have very carefully gone through the evidence on record.

6. The case of the management stands proved by the uncontroverted and unchallenged affidavit of the management's witness Shri Lalji. The reference, therefore, deserves to be decided in favour of the management and against the workman/Union without any orders as to costs.

7. In view of the above, the reference is decided in favour of the management and against the workman without any order as to costs holding that the action of the management of Ghorawari colliery of WCL, Kanhan Area, PO Gorawari, Distt Chhindwara (MP) in not promoting Sh. Shaheed Khan S/o Noor Khan as Fitter Helper Cat-IV w.e.f. December 1992 is legal and justified and consequently the workman is not entitled to any relief.

8. Let the copies of this award be sent to the Government of India, Ministry of Labour and Employment as per rules.

C. M. SINGH, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2007

का.आ. 3287.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एल. आई. सी. ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ संख्या 57/1988) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-10-2007 को प्राप्त हुआ था।

[सं. एल-17012/15/88-D-IV (A)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 22nd October, 2007

S.O. 3287.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 57/1988) of the Central Government Industrial Tribunal-Cum-Labour Court, Bangalore, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of LIC of India and their workmen, which was received by the Central Government on 18-10-2007.

[No. L-17012/15/88-D. IV (A)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, BANGALORE**

Dated : 26th September, 2007

PRESENT:

Shri A. R. SIDDIQUI, Presiding Officer

C. R. NO. 57/1988

I Party

Shri Nazirullah, Sub-staff,
Rep. by the General Secretary,
LIC Employees Union,
253, 9th Main Road,
Sampangiramnagar,
Bangalore-560027.

II Party

The Divisional Manager,
Life Insurance Corporation of India,
J C Road, Bangalore--560 002.

APPEARANCES

- I Party : Shri Muralidhar, Advocate
 II Party : Shri S. M. Gajendran, Advocate

AWARD

1. The Central Government by exercising the powers conferred by Clause (d) of Sub-section (1) and Sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-17012/15/88-D.IV(A) dated 17-10-1988 for adjudication on the following Schedule :

SCHEDULE

“Is the Divisional Manager, Life Insurance Corporation of India, Bangalore, justified in reducing the pay of Shri Nazirullah, sub-staff, by three stages, vide his order dated 15-9-986? If not, to what relief is the workman entitled?”

2. A charge sheet dated 23-11-1985 came to be served upon first party workman in the following terms :

“You Shri Nazirullah, Sub-staff, S. R. No. 507559, LIC of India, Civil Station East Branch Office, Bangalore-560 001 are hereby charged as under :—

That on 28th September, 1985 around 12.45 p.m. you indulged in indecorous and indecent behaviour towards Smt. K. Saraswathi, S. R. No. 507482, Asst. LIC of India, Civil Station East Branch Office, Bangalore. While doing so you had also used unparliamentary language and spat on her and showed your shoes and tried to physically assault her in the open hall, without any provocation.

By your above act you have caused disturbance in the Office and have conducted in an indisciplined manner. You have failed to maintain absolute integrity and devotion to duty and have committed acts detrimental to the interests of Corporation and prejudicial to good conduct. You have thereby violated Regulation 21 and 24 of LIC of India (Staff) Regulations 1960.

You are directed to state whether you admit that you are guilty of the charges mentioned above. If not, you are directed to put in your written statement to either with such documents as you propose to rely on in support of your defence, within seven days of service of this charge-sheet.

You are further directed to state whether you desire to cite any witness or witnesses (in which case, their names, designations and addresses should be furnished, indicating the nature of their evidence which is intended to prove or disprove the case), to enable the undersigned to decide whether you should be permitted to produce the witness or witnesses at your own cost.

In case your written statement, as mentioned above, is not received within the above specified period, further proceedings will ensue without any reference to you.

Dated at Bangalore this 23rd day of November, 1985”

3. The first party by his reply dated 18-12-1985 denied the charges of misconduct leveled against him resulting into the Domestic Enquiry against him and it is on the basis of the enquiry findings submitted by the Enquiry Officer holding him guilty of the charges, the impugned punishment order reducing his pay by three stages came to be passed against him. He challenged the same before the ALC concerned and the conciliation proceedings having failed, the present reference is made to this court.

4. The first party in his claim statement challenged the impugned punishment order as illegal, the enquiry findings holding him guilty of charges as suffering from perversity and not based upon sufficient and legal evidence. He also challenged the Enquiry Proceedings (respective pleadings with regard to validity and fairness or otherwise of the Enquiry Proceedings are omitted there being a separate finding on this point) as conducted in violation of LIC of India Staff Regulations, 1960 and against the principles of natural justice.

5. The management in its counter statement however asserted and maintained that impugned punishment order passed against the first party is very much just and legal keeping in view the gravity of the misconduct committed by him and that the enquiry findings holding him guilty of the charges are very much based upon sufficient and legal evidence and that proceedings of the enquiry conducted against him are in accordance with the said regulations and in accordance with the rules of the natural justice.

6. From the perusal of the records it can be seen that on the basis of the respective contentions of the parties, this tribunal on 21-12-1988 framed the preliminary issue as to “whether the second party proves that it has held the Domestic Enquiry in accordance with law?” There upon it is seen from the records that this tribunal by order dated 17-01-1989 deleted the above said issue allowing the application filed by the management in that regard. Then an application was filed by the first party requesting this tribunal to frame some three additional issues including the issue on Domestic Enquiry and that was rejected by this tribunal by order dated 27-02-1989. In the meanwhile the first party approached the Hon’ble High Court challenging the order of this tribunal in deleting the above said preliminary issue and the Hon’ble High Court in the W P No. 7786 of 1989 passed an order dated 24-06-1997 framing the following two issues to be tried by this tribunal :

“Issue 1: Whether the domestic enquiry is fair and proper?

Issue 2 : Whether the action of the employer in reducing the pay of the workman by three stages is justified on the misconduct being proved?"

7. There upon the matter was taken up for trial of the above said issue No. 1 calling upon the parties to lead evidence. The management during the of course of the trial of the said issue, examined one witness as MW 1 getting marked enquiry proceedings and papers at Ex M-1 series. No evidence as such was lead on the issue by the first party and after hearing learned counsels for the respective parties, this tribunal on 09-02-2007 recorded a finding on the above said issue to the effect that the Domestic Enquiry conducted against the first party by the second party is fair and proper. There upon the matter was taken up for hearing on merits i.e., on the point of alleged perversity of the findings and the quantum of the punishment.

8. The first party in his claim statement while challenging the enquiry findings has contended that the Enquiry Officer has not given the reasons as to how he came to the conclusion that the workman is guilty and that he merely recorded that charges are proved and why the evidence of the prosecution examined to [Matter Illegible] not conduct himself as quasi judicial officer and therefore the Enquiry Report submitted by the Enquiry Officer without discussing any evidence either of the prosecution or of the defence and without giving any reasonings for the conclusion arrived at holding first party guilty of the charges suffered from perversity and therefore cannot be taken to be basis for the punishment of the first party by the Disciplinary Authority. He also challenged the alleged punishment order contending that the Disciplinary Authority did not apply its mind to the above facts while imposing the punishment in question. Therefore, in the light of the above contentions of the first party workman in his claim statement we have to examine the very enquiry findings as to whether they suffered from any perversity or not.

9. Learned counsel for the first party workman Sh. Muralidhar took the court through the enquiry findings and contended that they cannot be found basis holding the first party workman guilty of the charge as they are bereft of any oral and documentary evidence produced by either parties and also bereft of the reasoning's to be assigned by the Enquiry Officer in coming to the conclusion of holding the workman guilty of the charges.

10. Learned counsel representing the management Sh. S. M. G. however submitted that the findings of the Enquiry Officer do not suffer from any perversity.

11. After having gone through the records more particularly the very findings of the Enquiry Officer, I find substance in the arguments advanced for the first party.

12. In order to appreciate the respective contentions of the parties it appears to the worthwhile to bring on record the very findings of the Enquiry Officer running as under:

"In accordance with your office order personnel/B-440 dated 30th December, 1985 and your letter dated 6-1-1986 appointing me as Enquiry Officer in connection with the charge-sheet issued to Shri Nazirullah, Sub Staff, S. R. No. 507559, 603 Branch, Bangalore, I report that I conducted the enquiry on the following days :

- | | | |
|--------------|--------------|---------------|
| 1. 23-1-1986 | 5. 4-3-1986 | 9. 24-3-1986 |
| 2. 1-2-1986 | 6. 12-3-1986 | 10. 5-5-1986 |
| 3. 11-2-1986 | 7. 14-3-1986 | 11. 6-5-1986 |
| 4. 21-2-1986 | 8. 19-3-1986 | 12. 15-5-1986 |

I examined the complainant Smt. Saraswathi on 4-3-1986 and Exhibit 1 (Complaint dated 5-11-1985) and Senior Branch Manager's letter—Exhibit-2 were given by Presenting Officer to me. Shri Nazirullah was assisted by Shri Sundara Murthy, Assistant, S.R. No. 506797, Accounts Department in defending himself in the enquiry.

Mr. Sundara Murthy cross-examined Smt. Saraswathi and Shri H.P. Narasimha Murthy and Shri K. Narayana Rao, witnesses for presenting the case, and produced one Shri G. Narayan, Defence witness. The defence witness was cross-examined by Presenting Officer. All these examinations and cross-examination were conducted in the presence of Shri Nazirullah and on all days, I have orally explained the matter discussion, questions and answers in Kannada to Shri Nazirullah. The charge relates to indecent behaviour of Shri Nazirullah towards Smt. Saraswathi, who was working as Assistant on 28-9-1985.

On the basis of statement made by Smt. Saraswathi about incident happened on 28-9-1985, I have examined various questions, answers by (1) Nazirullah, (2) Shri H. P. Narasimha Murthy, (3) Sri K. Narayana Rao, & (4) Shri G. Narayan, I have come to the conclusion that :

1. incident happened on 28-9-1985 as complained;
2. that Sri Nazirullah's behaviour towards Smt. Saraswathi was unbecoming of a colleague worker;
3. he misbehaved and scolded her and threatened to assault her physically;
4. this happened without any provocation on the part of Smt. Saraswathi.

I have taken all points brought in by the defence in their cross-examination and statement of defence witness and points made out in letter dated 15-5-1986 into consideration before coming to this conclusion."

13. Therefore from the perusal of the findings of the Enquiry Officer, it becomes crystal clear that the various contentions taken by the first party workman in challenging the same and the arguments advanced for the first party workman to the effect noted above are well based and well supported in the face of the findings. As could be read from the findings, the learned Enquiry Officer has not done anything more than recording the fact that certain witnesses were examined on behalf of the prosecution and certain witnesses were examined on behalf of the defence. He also noted the fact that prosecution witnesses were cross-examined by the Defence Representative and where as the defence witness was cross-examined by the prosecution. No where in his findings he brought out what actual oral or documentary evidence was produced on behalf of the management or on behalf of the first party workman. He never discussed the evidence which he said to have recorded either on behalf of the management or on behalf of the defence. He referred to no evidence to analyze or considered any evidence produced by either side, much less, giving any reasonings as to on what basis or on the basis of what evidence either oral or documentary he was lead to believe that misconduct as alleged in the charge sheet was established by the management evidence. He never whispered a single word as to what made him to believe the testimony of the management witnesses and what made him not to rely upon the defence evidence produced by the first party. He simply recorded findings to the fact that charges levelled in the charge sheet have been proved. In whose evidence and on the basis of what evidence those charges have been proved, there is no reasoning given by the learned Enquiry Officer. Therefore the above said findings of the Enquiry Officer certainly are not the findings to be given by a quasi judicial authority. They are not the findings on fact in the eye of law. There cannot be any findings without there being any discussion on the oral or documentary evidence produced during the course of the enquiry. As noted above, learned Enquiry Officer in this case simply narrated the facts transpired during the address of the proceedings of the enquiry without making any attempt to appreciate or analyse evidence brought on record during the course of enquiry so as to arrive at the conclusion as to whether the misconduct levelled against the first party was proved or not. Therefore, it was rightly argued on the party of the first party that findings of the Enquiry Officer have certainly suffered from perversity there being no discussion of evidence and no reasonings given by the Enquiry Officer supporting his conclusion. Therefore in the absence of any oral or documentary evidence being brought out discussed and considered and the reasoning given by the Enquiry Officer there on this tribunal cannot do the said job of Enquiry Officer by itself going through the oral and documentary evidence brought on the record by the parties during the course of the enquiry. There is no scope left for this tribunal to appreciate or re-appreciate the evidence supporting the

findings of the Enquiry Officer as he did not record the findings giving reasonings based on the evidence. Therefore, as argued for the first party it is a case of 'no evidence' or insufficient evidence and in the result the findings of the Enquiry Officer which are not at all the findings on fact in the eye of law cannot be sustained and therefore are liable to be quashed. Similar is the case with the impugned punishment order passed by the Disciplinary Authority. The Disciplinary Authority as argued for the first party has not applied its mind while taking into consideration the Enquiry Report holding the workman guilty of the charges. It was incumbent on the part of the Disciplinary Authority to go through the enquiry findings with reference to the evidence brought on record and to appreciate the same with reference to reasonings if any given by the Enquiry Officer supporting his conclusion. In the instant case though there was no evidence discussed and no reasonings given, even then the Disciplinary Authority comes to the conclusion that the charges or misconduct against the first party have been proved in the light of the findings of the Enquiry Officer. In the result, I am of the considered view that neither the findings of the Enquiry Officer nor impugned punishment order are sustainable in the eye of law. In the result impugned punishment order passed against the first party is liable to be set aside as illegal and vide ab-initio. Accordingly, the points of reference and issues No. 1 and 2 are answered. Hence the following award :

ORDER

Impugned punishment order dated 15-9-1986 passed against first party reducing his pay by three stages is here by set aside. The management is directed to reimburse the loss caused to the first party workman by restoring his pay by three stages from the date of impugned punishment order till the date of passing of this award and onwards.

No order to costs.

(Dictated to U. D. C. transcribed by him, corrected and signed by me on 26th September, 2007)

A. R. SIDDIQUI, Presiding Officer

नई दिल्ली, 22 अक्तूबर, 2007

का.आ. 3288.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनाइटेड कमर्शियल बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 30/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2007 को प्राप्त हुआ था।

[सं. एल-12012/298/94-आई आर(बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 22nd October, 2007

S.O. 3288.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 30/1995) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of United Commercial Bank and their workman, which was received by the Central Government on 22-10-2007.

[No. L-12012/298/94-IR (B-II)]

RAJINDER KUMAR, Desk Officer
ANNEXURE

BEFORE SRI R.G. SHUKLA, PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, KANPUR
Industrial Dispute No. 30 of 1995

In the matter of dispute between :

Shri Suresh Kumar Sonkar

C/o Sri V. N. Sekhari

26/104 Birhana Road,

Kanpur.

and

Zonal Manager

United Commercial Bank

23 Vidhan Sabha Marg,

Lucknow.

AWARD

1. Central Government, Ministry of Labour, vide notification No. L-12012/298/94 IRB-2 dated 21-2-95 has referred the following dispute for adjudication to this Tribunal :-

Whether the action of the management of UCO Bank Lucknow, in terminating the services of Sri Suresh Kumar Sonkar casual workman. w.e.f. 23-7-93 is legal and justified ? If not what relief is the said workman entitled ?

2. The case of the concerned workman Suresh Kumar Sonkar is that he was engaged as temporary peon on permanent post at Lajpat Nagar Branch of the opposite party at Kanpur. His date of appointment is 5-9-89 and the workman worked continuously upto 23-7-93. During this period some times wages were given to him in his name still some times these wages were given to him in the fictitious name. Whereas his signatures were received on payment receipt. In this way he had completed more than 240 days in a year preceding the date of his termination, hence termination is in breach of provisions of Section 25 F of Industrial Disputes Act. As no retrenchment compensation and notice pay was given to him hence retrenchment from service is bad in law. Further this retrenchment is also bad being in breach of Section 25 G and 25H of Industrial Disputes, 1947.

3. The opposite party bank has filed reply in which it has been alleged that the concerned workman was engaged

as a water boy. He did not work continuously. He also did not perform the duty of a peon. Lastly it is alleged that he was a daily rated worker. There is a procedure of appointment of peon hence if the applicant is allowed to join his duty the same will amount to back door entry.

4. In the rejoinder nothing new has been detailed by the workman except reiterating the facts already pleaded by him in his statement of claim.

5. In support of his case the workman has examined himself as W.W.1 beside he has filed Ext. W.1 to W.5. Further he has relied upon the joint inspection report. In rebuttal the management examined V.K. Shroff M.W.1 and has also filed Ext. M.1 to M.5 the entries of saving bank account of the workman.

6. At this place it will not be out of place to mention here that this tribunal after appreciating the pleadings and evidence of the parties have recorded an award dated 2-12-97. in favour of the workman holding that the termination of the workman being in breach of Section 25F of I.D. Act is bad in law and the workman is held entitled for his reinstatement.

7. The opposite party being aggrieved of the award of the tribunal challenged the same before Hon'ble High Court, Allahabad by way of filing Civil Misc. Writ Petition No. 12683 of 1998 which was finally disposed off by the Hon' High Court vide its decision dated 21-11-06, where by the impugned award dated 2-12-97 passed in the instant case was set aside, and the matter was remanded back to the tribunal for deciding the same afresh after providing opportunities of hearing the contesting parties within a period of six months from the date production of certified copy of the award before the tribunal. After the certified copy of the decision of the Hon'ble High Court was received registered notices were issued to the contesting parties.

8. It may be pointed out that the Hon'ble High Court has categorically held that it is apparent that even though the tribunal itself called for a joint inspection report it failed to go into it and simply relied on the oral testimony. Hon'ble High Court has further held that the tribunal erred in not considering the joint inspection report while passing the impugned award and has ignored the material evidence which was before it to decide the question of 240 days work, therefore, the conclusion drawn by the tribunal is vitiated.

9. The Tribunal has heard the arguments of the contesting parties at length and have also gone through the record of the case carefully.

10. Both sides have simply argued that the case be decided in the light of the observations recorded by the Hon'ble High Court in its decision where by the case has been remanded.

11. On going through the observations of the Hon'ble High Court it is quite clear that although joint inspection

report was already on record but still the same has been ignored while arriving at a conclusion of having worked for 240 days by the workman. The award of the tribunal stands quashed for this simple reason.

12. Now in view of the observations recorded by the Hon'ble High Court, Allahabad, it will be examined if it has been proved the joint inspection report which is very much on the record that the workman has completed 240 days of continuous service or not. The tribunal has given its anxious consideration over the joint inspection report for the period preceding one calendar year from the date of alleged termination and the tribunal finds that the workman during the said period has never worked for 240 days or more. Therefore, the joint inspection report is of no help to the workman which has duly been signed by the workman as well as by the officer of the bank. The workman therefore would not be entitled for his reinstatement in the service of the opposite party in view of law laid down by the Hon'ble Supreme Court in the case of State of Karnataka versus Uma Devi in which the Hon'ble court has clearly laid down the law that daily wage or casual employee has no right to secure regular and permanent employment in public employment. Moreover, in another case Himanshu Kumar Vidyarthi versus State of Bihar and another FLR 1997 (76) 217, the Hon'ble Supreme Court of India has held that the concept of retrenchment cannot be stretched to such an extent so as to cover these employees. Since they are only daily wage employees and have no right to the posts their disengagement is not arbitrary.

12 A. The law laid down by the Hon'ble Supreme Court (supra) apply with full swing to the facts and circumstances of the present case and therefore, the case of the workman is not covered under the definition of retrenchment, hence he cannot be granted protection of any of the provisions of Industrial Disputes Act, 1947.

13. For the reasons discussed above, it is held that the claim of the workman is liable to be dismissed and is accordingly dismissed holding that he is not entitled for any relief as claimed by him. Reference is answered accordingly.

R. G. SHUKLA, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2007

का.आ. 3289.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं. 2, नई दिल्ली के पंचाट (संदर्भ संख्या 16/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2007 को प्राप्त हुआ था।

[सं. एल-12012/75/2005-आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 22nd October, 2007

S.O. 3289.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. No. 16/2006 of the Central Government Industrial Tribunal-Cum-Labour Court, No. 2, New Delhi as shown in the Annexure in the Industrial Dispute between the management of Punjab National Bank and their workmen, which was received by the Central Government on 22-10-2007.

[No. L-12012/75/2005-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

**BEFORE THE PRESIDING OFFICER:
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
NEW DELHI**

Presiding Officer : R. N. RAI

I. D. No. 16/2006

IN THE MATTER OF :

Shri Raghunath Prasad Maji,
R/o. Rashmi Grih Udyog,
F-68, Industrial Area,
Bahadradab,
Haridwar (Uttanchal).

Versus

The Regional Manager,
Punjab National Bank,
Regional Office : BHEL, Ranipur,
Haridwar (Uttanchal).

AWARD

The Ministry of Labour by its letter No. L-12012/75/2005-IR(B-II) Central Government Dt. 24-02-2006 has referred the following point for adjudication.

The point runs as hereunder :—

“Whether Shri Raghunath Prasad Manjhi employed in Punjab National Bank, Regional Office, Haridwar as a Driver during the period 04-03-1990 to 11-05-2004 is a workman as defined under section 2 (s) of the ID Act, 1947 and whether his termination/ disengagement from the service w.e.f. 12-05-2004 by the management of Punjab National Bank without any notice and compensation is legal and justified? If not, to what relief the concerned person is entitled?”

The workman applicant has filed claim statement. In the claim statement it has been stated that the applicant is an employee of PNB, Regional Office, Ranipur, Haridwar. The job assigned to applicant was to drives the Jeep of the bank used by its official. Applicant has been serving on this job for more than fourteen years. But he was not allowed to maintain continuation in this service. And his service was several times discontinued by the bank officials in

order to make applicant deprived for raising any claim for the confirmation on this job.

That the applicant was appointed on his job of Driver of PNB, Ranipur, Haridwar on 11-03-1990 and he served on this job for almost four years in 13-03-1990 to 13-02-1994. A certificate relating to his satisfactory performance of his job was given by their Head Bank Officer, Ranipur More, Haridwar, Mr. R.C. Sharma which is annexed herewith and marked as Annexure-I.

That it is worthwhile to mention here that the applicant is an experienced Driver and having a valid driving licence since 1985. True copy of the Driving Licence hold by the applicant is annexed as Annexure-2.

That despite working satisfactorily and sincerely the applicant has not been considered for permanent appointment by the bank.

That since 13-03-1990 applicant has been continuously serving as driver and all the breaks during this long term were made to create a camouflage by the bank and this act of the Bank is unfair labour practice.

That during all his service at bank as driver the applicant last time has been appointed temporarily on 01-09-2003 as a driver and he served continuously till 11-5-2004 without serving any kind of notice.

That again in order to deprive applicant for raising any claim for permanent appointment at bank the applicant was again terminated from his job on 11-5-2004 without serving any kind of notice.

That the applicant's colleagues as well as junior to applicant have been given permanent appointment in the bank thus the applicant has been discriminately treated.

That the applicant is a workman as defined under section 2 (s) of the ID Act, 1947 and illegally termination of deponent raises a industrial dispute between deponent and his employee.

That the applicant belongs to schedule caste and being a member of suppressed society has got a right of benefit of reservation of seats for schedule caste. But the applicant is continuously discriminated by his employer.

That the applicant has served on his last tenure from 1-9-2003 to 11-5-2004 and completed more than 240 working days on his service, a certificate issued by then Regional Manager, PNB, Ranipur, Haridwar is annexed as Annexure-3.

That the termination of the applicant is patently illegal and applicant is entitled to be reinstated in his service with full payment of the back wages.

That the applicant was not given any prior notice before termination of his job by the management of the bank.

That after spending major portion of his young life for driving vehicles for bank as a driver applicant is not capable to get any other source of livelihood and is unable to earn for two square meals to his family.

The management has filed written statement. In the written statement it has been stated that the service condition of the Bank Employees is governed by Shastri Award/Deşai Award/BPS, amended from time to time. Classification of award staff/workmen as given in the wards/settlements are as under :—

- (a) Permanent Employees.
- (b) Probationary Employees.
- (c) Temporary Employees.
- (d) Part-time Employees.

From the above it is evident that the conditions laid down in the settlements are not available to the personal drivers, as they are in fact governed between officer concerned and the Driver.

In terms of the rules of the bank, the following categories of Sr. Executives provided with Bank's Car/Jeep are entitled for reimbursement of the expenses incurred by them for engaging personal drivers under private arrangements :—

- (a) All Asstt. General Managers and above.
- (b) Regional Managers/Chairman of RRBs (till the period they are designated as Regional Manager/Chairman of RRB).
- (c) Lead Bank Officers.

In the instant case, Shri Majhi was engaged by Shri P. S. Tripathi previously Sr. Regional Manager at Haridwar as Personal driver to drive the Car/Jeep provided by the bank to Shri Tripathi. As such, Shri Majhi was engaged by Sr. Regional Manager, Shri Tripathi, purely on private arrangements.

The question of employer and employee relationship between the bank and personal drivers of Sr. Executives of the bank was considered by the Apex Court in the case of Gulam Destagir Vs. PNB (1978 LLJI 313) wherein it is held that there is no employer-employee relationship between the bank and the personal driver engaged by Sr. Executives of the bank, the said arrangement is made purely in private capacity by the Sr. Executives.

That the applicant Shri Raghunath Prasad Majhi was not a workman as per section 2 (S) of the ID Act, 1947 as he was never employed on the roll of the bank. The relations essential for raising the dispute before the authority i.e. employer-employee relationship never existed between the bank and Shri Raghunath Prasad Majhi within the meaning of section 2 (k) of the ID Act, 1947, as such the claim of the applicant is not maintainable.

That since the applicant Shri Raghunath Prasad Majhi was not employed by PNB so there was no question of termination of service or any retrenchment under section 2 (oo) of the ID Act, 1947, as such in the present case the condition precedent for raising such a matter before the authority under the provision of law for any decision or reconciliation never existed.

That the application has been filed by the applicant u/s 2 (a) of the ID Act, 1947 which is not maintainable as the applicant was not a workman within the meaning of Section 2 (oo) (bb) of the ID Act, 1947 and therefore, it is not a case fit to ask for reference to adjudication u/s 2(5) of the said act. As he is not being covered under any legal provision, the application of Shri Majhi need not be considered before the authority and is liable to be dismissed summarily.

That in case of Standard Chartered Bank Vs. ALC(C) and others reported in 1992 (65) FLR 769 and 1993 I CLR 216, it has been settled by Hon'ble High Court, Calcutta that the personal drivers of Sr. Bank Executives are not employees of the bank and so no conciliation proceedings can be initiated on such dispute.

That the Justice K. Ramaswamy and Justice D.P. Wadhwa of Hon'ble Supreme Court has held in case of Himanshu Kumar Vidhyarthi and others Vs. State of Bihar reported Act. 1997 (76 FLR) that termination of services of daily wagers, temporary employees cannot be questioned under industrial dispute act.

The applicant was never appointed as Driver by the bank and has never been on the roll of the bank. As such question of discontinuing his services as alleged, does not arise. The facts remain that specified senior executives provided with bank's Car/Jeep are entitled for reimbursement of expenses incurred by them for engaging their own personal drivers under private arrangements without any relationship with the bank.

The facts remain that the applicant Shri Majhi was engaged by Shri P.S. Tripathi, previously Sr. Regional Manager at Haridwar as a personal driver to drive the Car provided by the bank to Shri Tripathi. As such, Shri Majhi was engaged by Sr. Regional Manager, Shri Tripathi purely on private arrangements.

That the facts remain that there exists no relationship between the bank and the applicant who was engaged by Sr. Regional Manager, Shri Tripathi purely on private arrangements. As such, no question of depriving applicant by termination of his services on notice by the bank ever arises.

The workman applicant has filed rejoinder. In his rejoinder he has reiterated the averments of his claim statement and has denied most of the paras of the written statement. The management has also denied most of the paras of the claim statement.

It was submitted from the side of the workman that he served the management from 04-3-1990 to 11-5-2004 in PNB, RO : Haridwar as Driver.

It was further submitted that he worked from 11-3-1990 to 13-2-1994 for 4 years & 1-9-2003 to 11-5-2004. He completed 240 days in the previous years of his employment as well as prior to termination of his services.

It was submitted from the side of the management that the working of the workman is not denied. He was engaged on bank's Car/Jeep by the authorities who are entitled for Car/Jeep. All AGMs & above Regional Managers/Chairman of RRBs & Lead Bank Officers are entitled to Cars/Jeep & have been entitled to engage the personal drivers under private arrangement. This workman was engaged as personal driver of the authorities, who were entitled for Car/Jeep, and payment to him was made by the officers and they got all the expenses reimbursed from the management. There was no engagement of the workman directly by the management and there was no payment made to the workman directly by the management.

The Bank Officer's engaged him as personal driver and made him payment out of the expenses incurred by them and was paid to them by way of reimbursement.

It was further submitted that it was held in 1978 LLJ 1313 and (1992) 65 FLR 769 and 1993 I CLR 216 that personal drivers engaged by the executives are not the employees of the Bank, so no conciliation proceedings can be initiated on such dispute.

It becomes quite obvious from perusal of the certificate issued by Sh. R.C. Sharma, Chairman that he engaged the workman from 11-3-1990 to 13-2-1994 DURING HIS POSTING AS Lead Bank Officer, PNB at bank's Jeep. This certificate shows that the workman was engaged on the bank's Jeep. The workman has filed photocopy certificate dated 11-5-2004 & it has been certified by Sh. P.S. Tripathi, Sr. Regional Manager that the workman was engaged as purely temporary personal Driver on daily wages basis since 1-9-2003 to 11-5-2004 on the Car provided to him by the PNB.

It becomes quite obvious from these certificates that the workman was engaged by Sh. R.C. Sharma on the bank's Jeep from 11-3-1990 to 13-2-1994 & he was engaged by Sh. P. S. Tripathi, Sr. Regional Manager as personal Driver from 1-9-2003 to 11-5-2004.

The workman has not filed any document to show that payment to him was made by the management. From the documents filed on the record by the bank it becomes quite obvious that payment has been to the Sr. Regional Manager of the wages of the Driver. These Officers have received money by way of reimbursement & they have made payment to the personal driver engaged by them. The name of the workman does not appear on the attendance sheets filed by the management.

The workman was engaged as personal Driver by the Sr. Regional Manager & the Chairman. Payment to him was made by these two authorities. The bank has not made any payment, so the services of the workman was not rendered to the bank but to the Officers of the bank in view of their entitlement & the authorities received themselves the wages of the Driver & made payment to him. There is no employer-employee relationship between the

management & the workman, so there is no question of payment of any retrenchment compensation to the workman. The workman worked for the authorities as their personal Driver. He was engaged by the authorities concerned. He did not work for the bank. Section 25 F of the ID Act, 1947 is not attracted in the circumstances. The workman applicant is not entitled to get any relief as prayed for.

The reference is replied thus :

Shri Raghunath Prasad Manjhi employed in Punjab National Bank, Regional Office, Haridwar as a Driver during the period 4-3-1990 to 11-5-2004 is not a workman as defined under Section 2 (s) of the ID Act, 1947 and his termination/disengagement from the service w.e.f. 12-5-2004 by the management of Punjab National Bank without any notice and compensation is legal and justified. The workman applicant is not entitled to get any relief as prayed for.

The award is given accordingly.

R. N. RAI, Presiding Officer

Date: 17-10-2007.

नई दिल्ली, 22 अक्टूबर, 2007

का.आ.3290.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोल्हापुर के पंचाट (संदर्भ संख्या 20/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2007 को प्राप्त हुआ था।

[सं. एल-12012/357/94-आई आर(बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 22nd October, 2007

S.O. 3290.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 20/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Kolhapur as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bank of Maharashtra and their workman, which was received by the Central Government on 22-10-2007.

[No. L-12012/357/94-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE SRI M.B. DATEYE,

PRESIDING OFFICER

LABOUR COURT, KOLHAPUR

Reference (IDA) No. 20/2003.

Between :

Bank of Maharashtra, Rukmini Plot No. 7,
233, Survey Colony, New Shahupuri,
Kolhapur.

.....First Party

AND

Shri Shivaji R. Kamble since deceased through L.R.'s ;

1. Bhagirathi Shivaji Kamble,

2. Yashwant Shivaji Kamble,

3. Sangita Shivaji Kamble,

4. Reshma Shivaji Kamble,

All are A/p Koulav, Tal. Radhanagari,

Dist. Kollapur.

.....Second Party

CORAM : Shri M.B. Datye, Presiding Officer.

ADVOCATES : Shir G.P. Pansare, Advocate for the
second party.

Shir D.S. Joshi, Advocate for the first Party

AWARD

(Date : 28-9-2007)

This is a reference sent by the Ministry of Labour Government of India, New Delhi for adjudication of industrial dispute between the first party employer and second party workman.

2. Second party filed the statement of claim at Ex. U-5. He says that he was working as a Peon with the first party since 1982. On 7-1-1993 he was suspended. It was alleged that he misbehaved with his superiors under the influence of intoxication. Opportunity was not given to defend himself. Principles of natural justice were violated during the entire enquiry proceeding. Enquiry was conducted by Shri Mohite, Branch Manager of Rajarampuri Branch. As per rules and procedures enquiry has to be conducted by some impartial person which was not done in this case. Medical examination of the second party was not carried out. On 5-1-1993, second party went to this office to explain the reasons of leave and to ask for further leave. Because the relations of the second party and the Branch Manager were not healthy the allegations of misbehaviour was made. No such incident took place. He was forced to accept the charges. His past service record is clean. The punishment is shockingly disproportionate. He prays for reinstatement with full back wages and continuity of service.

3. During the pendency of the reference second party expired. His legal heirs Smt. Bhagirathi, Yashwant, Sangeeta and Reshma are brought on record. Because second party is no more Ld. Adv. Shri Pansare for second party fairly admitted that he prays for back wages and other benefits only.

4. First party has filed the written statement at Ex. C-2. It is said that on 5-1-1993, at 9:35. Second party went to Gangavesh Branch in intoxicated stage. He told that state of his mind was not good. He would attend the duty on next day and would produce the medical certificate. He was sked to go. At 10.15 am he directly went to Branch Manager's cabin and abused him. He was asked to go home but he was not ready. He abused Branch Manager in presence of the customers in business hours and tarnished the image of the bank. Departmental enquiry was held.

Charges were voluntarily accepted by the second party and he gave written admissions to that effect on 18-8-1993. He was allowed to defend his case through union representative, however he had not intended to plead his case by anyone during the enquiry. Opportunity was also given to him to submit his say regarding quantum of punishment. As the charges were proved and he was awarded punishment of dismissal on 31-3-1994. Subsequently he preferred appeal to Appellate Authority. He was given hearing by the Appellate Authority and on 4-8-1994, Appellate Authority confirmed the punishment. It denied other allegations. It said that past record of the second party was not satisfactory. It was observed that his behaviour was beyond improvement. It prayed for rejection of the reference.

5. From the statement of claim and written statement my learned predecessor was pleased to frame the preliminary issue regarding the fairness of the enquiry. But parties did not lead any evidence on that issue. Now, the matter is finally argued so with the consent of both the parties I add following issues. And decide all of them together with the following reasons;

ISSUES	FINDINGS
1. Whether the enquiry held against the party no. 2 was legal, fair, proper and in accordance with the principles of natural justice?	Yes
2. Whether second party proves that the punishment awarded is shockingly disproportionate?	No.
3. Whether second party proves that order of termination is bad in law?	No.
4. Are the legal representatives of the second party are entitled for back wages and other benefits which the second party could have got if he were reinstated?	No.
5. What Award?	As per final Award.

: REASONS :

6. Issue No. 1 :- Though the statement of claim and written statement mention some incident of 5-1-1993, the enquiry papers relied on by both the parties speak about the misconduct of 11-4-1992. Parties have not led any oral evidence in the matter and they have argued all the issues. Ld. Adv. Pansare for the second party argued that the first party said that the enquiry was conducted as per the rules and procedure but the rules and procedure are not produced on record. So it cannot be said that Shri Mohite, Branch Manager who conducted the enquiry had any authority to conduct the enquiry. It is also said that as the alleged enquiry held against the complainant was by the Branch Manager, the other Branch Manager who conducted the enquiry is likely to have bias. Except the argument, there is

no evidence on the part of the second party to show that because the enquiry officer was the Branch Manager, he had bias against the second party. It is true that the enquiry officer was the Branch Manager of Laxmipuri Branch and the alleged misconduct had occurred at Gangawash Branch of the first party. The enquiry papers show that on the first day itself when the charge was read over to the second party, he pleaded guilty. He admitted the document the documents. So no witness was examined. In this particular sense though the argument about bias seems to be attractive. I do not find any reason to believe the same. So I do not base my judgement on this aspect of bias in the enquiry.

7. The enquiry papers read that Shri V.K. Barve, Branch Manager of Laxmipuri branch was the enquiry officer. Delinquent employee was present. Shri V. S. Tawildar was the management representative. Delinquent employee was asked whether there was anyone to represent him. He said that he does not have any representative. Thus, the charge sheet was read over to him and he was asked that whether he understood the charge. He said that he understood the charge. Then he was asked whether he admitted the guilt. He said that he unconditionally accepted all the charges. Lt. Adv. Shri Pansare has strongly opposed this type of recording the plea. He said that the plea has to be recorded in the words used by the delinquent employee in admitting the guilt. The report reads that he admitted all the charges unconditionally and it is not known whether he used the same words. So mere noting that he admitted the charges should not be taken as the true recording of the enquiry.

8. 48 documents were produced. They were given to him. The documents in English were explained to him in Marathi. He said that he had no doubt about the documents. Again this is not in the words of the delinquent employee. Having no doubt about the documents does not mean that he admitted all the documents. Relying on this statement, the enquiry officer said that the charges of misconduct that is causing misbehaviour under influence of liquor, causing indiscipline are proved. Documents bear the signature of the delinquent employee. Enquiry was held on 15-12-1992 on the very day, the delinquent employee gave a letter to the enquiry officer in writing that he admits all the charges unconditionally. he does not have any complaint about it. It seems to be in the handwriting of the delinquent employee. He signed below the same. Considering this letter of the delinquent employee, though it is true that the enquiry officer did not record the pleading of guilty by the delinquent employee in his words, as the delinquent employee admitted guilt unconditionally in writing in his own words, according to me, the mere fact that the enquiry officer did not record the pleading of guilty by the delinquent employee in his own words did not cause any failure of the principles of natural justice. If the delinquent employee had not admitted the guilt by separate letter, one could have said that the enquiry officer would have

recorded on his own that the delinquent employee pleaded guilt. Here the remark is signed by the delinquent employee. There is another writing in his own words that he admitted his guilt. He knew the charges. Earlier evidence in the form of complaints to the Branch Manager, the letter by the staff member go to show that the delinquent employee visited the bank. He was on leave. It said that he misbehaved under intoxication. As the enquiry officer followed the procedure of enquiry and because the charge sheet was served on him, he was given opportunity to defend himself, he pleaded guilty, he gave another letter. There was no necessity to call any other witness to prove the guilt. Earlier also he remained absent for various reasons. So I come to the conclusion that enquiry was legal, fair and proper. I answer first issue in affirmative.

9. **ISSUE No. 2 :-** As said earlier, the second party admitted all the charges levelled against him. Second party relies on decision in Theatre Employees Union & Ors. vs. S.V. Kotnis & Ors. 1992 (64) FLR 995 wherein it was said that the order of termination on the basis of the statements admitting guilt without show-cause notice or conducting domestic enquiry was not sustainable in law. It is also said that without charge sheet employer cannot be permitted to lead evidence for the first time before the Labour Court. In this case, charge sheet has been issued, enquiry has been held and in the enquiry second party pleaded guilt. So the decision is not helpful to the second party. Earlier also his increment was stopped and he was warned for committing similar misconduct. His allowance of bill collector was stopped. Record shows that he remained absent without leave for days 63, 40, 51 and 53 days in the year 1989 to 1992. As he admitted the guilt and the letters complaining against him, I come to the conclusion that the punishment of dismissal was proper and it was not at all shockingly disproportionate. I answer the second issue in negative.

10. **ISSUE No. 3:-** The second party pleaded guilty. He had no doubt about the documents. Earlier also he had committed similar misconduct. Proper opportunity was given to him in the enquiry, so the termination cannot be faulted for any reasons. I answer the issue in negative.

11. **ISSUE No. 4:-** As the legal representative of the second party do not succeed in proving that the enquiry was not conducted following the principles of natural justice as well as the shockingly disproportionate punishment, they are not entitled for any relief. Reference must fail. I pass following order;

ORDER

Reference is rejected.

Award accordingly.

M.B. DATYE, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2007

का.आ. 3291.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 93/98)

को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2007 को प्राप्त हुआ था।

[सं. एल-12012/146/97-आई आर(बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 22nd October, 2007

S.O. 3291.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 93/1998) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the industrial dispute between the management of Punjab National Bank and their workman, received by the Central Government on 22-10-2007.

[No. L-12012/146/1997-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE SRI R G SHUKLA PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM - LABOUR COURT, KANPUR

Industrial Dispute No. 93 of 1998.

In the matter of dispute between :

General Secretary

Punjab National Bank Staff Association

C.O. 10/2 Patrika Marg

Civil Lines Allahabad

(in relation to their workman Sri D K Shahi)

And

The Regional Manager

Punjab National Bank

Income Tax House Building

Bulandshahar

AWARD

1. Central Government, MOL, New Delhi, vide notification no. L-12012/146/97/IR (B-II) dated 14-5-98, has referred the following dispute for adjudication to this tribunal:

Whether the action of the management of Punjab National Bank in stoppage of two annual increments without cumulative effect w.e.f. 1-7-96 on Sri D K Shahi, Clerk cum cashier is proper, legal and justified? If not to what relief the said workman is entitled?

2. It is needless to give full facts of the case as after the exchange of pleadings between the parties, neither the union raising the present industrial dispute put its appearance nor the workman appeared in the case to adduce evidence in support of his case. In view of it the management also refused to adduce their evidence. Therefore, virtually it is a case in which both sides have not adduced their respective evidence. Under these circumstances of the case the tribunal has no hesitation in holding that the union or the workman is not entitled for any relief as claimed by them pursuant to the reference order, for want of evidence. Reference is answered according.

R. G. SHUKLA, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2007

का.आ. 3292.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दिल्ली दूरदर्शन केन्द्र के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नई दिल्ली न. 2 के पंचाट (संदर्भ संख्या 90/2002, 91/2002, 93/2002, 94/2002, और 95/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2007 को प्राप्त हुआ था।

[सं. एल-42012/122/2002-आई आर(सी-11)]

[सं. एल-42012/134/2002-आई आर(सी-11)]

[सं. एल-42012/138/2002-आई आर(सी-11)]

[सं. एल-42012/140/2002-आई आर(सी-11)]

[सं. एल-42012/139/2002-आई आर(सी-11)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 22nd October, 2007

S.O. 3292.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 90/2002, 91/2002, 93/2002, 94/2002, and 95/2002,) of the Central Government Industrial Tribunal-cum-Labour Court, No. 2, New Delhi as shown in the Annexure in the industrial dispute between the employers in relation to the management of Delhi Doordarshan Kendra and their workman, which was received by the Central Government on 22-10-2007.

[No. L-42012/122/2002-IR (CM-II)]

[No. L-42012/134/2002-IR (CM-II)]

[No. L-42012/138/2002-IR (CM-II)]

[No. L-42012/140/2002-IR (CM-II)]

[No. L-42012/139/2002-IR (CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Presiding Officer : R. N. RAI. I. D. Nos. 90/2002,
91/2002, 93/2002, 94/2002, AND 95/2002,

IN THE MATTER OF:—

Shri Hans Raj & 4 Ors.,
S/o Shri Banwari Lal,
C/o P-2/624, Sultanpuri,
New Delhi.

Versus

The Director General,
Delhi Doordarshan Kendra,
M/s. Prasar Bharti,
Mandi House,
New Delhi-110001.

AWARD

The Ministry of Labour by its letter Nos. [No. L-42012/122/2002-IR (CM-II)] Central Government Dt. 11-11-2002, [No. L-42012/134/2002-IR (CM-II)] Central Government Dt. 11-11-2002, [No. L-42012/138/2002-IR (CM-II)] Central Government Dt. 11-11-2002, [No. L-42012/140/2002-IR (CM-II)] Central Government Dt. 11-11-2002, [No. L-42012/139/2002-IR (CM-II)] Central Government Dt. 11-11-2002, has sent the five references for adjudication.

The dispute is the same in all the five references that is in I. D. Nos. 90/2002, 91/2002, 93/2002, 94/2002, and & 95/2002, All the references are consolidated together. The common reference regarding all the workmen is as under.

"Whether the action of the management of Prasar Bharti Broadcasting Corporation, Doordarshan Kendra, New Delhi in terminating the services of Shri Hans Raj S/o Shri Banwari Lal, Ex-Casual Labour w.e.f. 1-2-2001, Sh. Md. Shahbaz Khan, Ex-Casual Labour w.e.f. 1-2-2001, Sh. Dhanvir, S/o. Sh. Kabool Singh, Ex-Casual Labour w.e.f. 1-2-2001, Sh. Manohar Paswan, S/o. Sh. Kabool Singh, Ex-Casual Labour w.e.f. 1-2-2001 and Sh. Tej Pal, S/o. Sh. Sohan Das, Ex-Casual Labour w.e.f. 1-2-2001, is legal and justified? If not, to what relief the workmen are entitled to and from which date?"

The date of engagement and disengagement of the workmen are as under:

Name of the Workman	Dt. of Engagement	Dt. of Disengagement
Sh. Tej Pal	2-8-1998	1-2-2001
Sh. Hans Raj	2-8-1998	1-2-2001
Md. Shahbaz Khan	1-12-1998	1-2-2001
Sh. Manohar Paswan	27-3-1996	1-2-2001
Sh. Dhanvir	1-11-1996	1-2-2001

The workmen applicants have filed claim statement. In the claim statement it has been stated that the aforesaid workmen were working with the aforesaid management as Casual Labours since 1996 - 1998 and have never given any chance of complaint.

That the Management No.1 is the corporation under which the aforesaid workmen have worked and it has power to control the service affairs of the workmen, the management No.2 is also the controller of the service affairs of the workmen and management No.3 is the Center where the aforesaid workmen have worked during their employment period.

Hence the workmen worked under the sole control of the aforesaid management.

That the entire work of the, workmen was completely satisfactory.

That the workmen are regular workers of the management and hence they are entitled to get the salary according to Minimum Wages Act and are also entitled to be regularized in services from the date of their appointment.

That the workmen were less paid according to the Minimum wages Act, and they have demanded the wages according to the Minimum Wages Act but the management failed to tender the same there after the workmen filed a complaint to Government and there after the management has raised the salary of the workmen but being annoyed with the workmen terminated their services.

That as the workmen worked with the management as regular employees without any break since 1996-98.

That aggrieved by the Act of the aforesaid mgt., the workmen have served a Legal Notice regarding the illegal termination but the management failed to reply to the same, thereafter the workmen have filed an industrial dispute before the Regional Labour Commissioner, Central New Delhi. The Conciliation Proceeding of the disputes failed due to non cooperative attitude of the management. Hence the present reference.

The management has filed written statement. In the written statement it has been stated that the petitioners/workmen have suppressed the material facts from the Hon'ble Tribunal, hence, the petition is liable to be dismissed on this ground alone.

That the petition is bad for non joinder of necessary parties i.e. M/s. Navnidh Carriers. Hence, merits rejection.

It is submitted that the applicants are not ex-casual labourers of the respondent. They have never worked on casual basis. It is further submitted that the applicants in the present case were the employees of the contractor namely M/s. Navnidh Carriers and they were booked by the said contractor as per the demand placed by the respondent No.3 as and when required. The copies of all the documents pertaining to the engagement process of M/s. Navnidh Carriers are attached herewith as Annexure R-1. Therefore, it is wrong to say that the services of the petitioners/workmen were terminated by the respondent. It is humbly submitted that the petitioners/workmen deliberately tried to mislead the Hon'ble Tribunal by concealing the material facts. It is once again reiterated herein that the applicants have never worked in the office of the respondent as a regular staff and therefore, the question of terminating their services by the respondent does not arise.

It is relevant to note that the petitioners/workmen were engaged by the contractor, who was the real master. It is further submitted that the management respondents do not have any record of the petitioners/workmen. The contractor is alone responsible for the payment of all the wages and service condition of the workmen. It is once again reiterated herein that if they have any grievance, they should have approached their employer alone i.e. the

contractor for their grievances and not to the respondents as respondents, who have nothing to do with the matter. It is vehemently denied that the petitioners/workmen were regular workers in the office of the respondents and therefore, they are entitled for any wages etc. from the respondent.

It is pertinent to mention here that the petitioners/workmen had earlier filed an O.A. bearing No. 2367/1999 in the Hon'ble Central Administrative Tribunal, New Delhi raising all the similar points and after hearing the parties the Hon'ble Tribunal dismissed the case on the ground that there does not appear to be any master and servant relationship between the workmen and the management. A copy of the said order dated 6-7-2001 is enclosed herewith as Annexure - R -2. Therefore, it is humbly submitted that the petitioners/workmen cannot raise the same issues before this Hon'ble Tribunal as the same is hit by the principal of resjudicata. Even otherwise, the matter is devoid of any merit and the same is liable to be dismissed.

The workmen applicants have filed rejoinder. In the rejoinder they have reiterated the averments of their claim statement and have denied most of the paras of the written statement. The management has also denied most of the paras of the claim statement.

Evidence of both the parties has been taken.

Heard arguments from both the sides and perused the papers on the record.

From perusal of the pleadings of the parties the following issues arise for adjudication:

1. Whether there is employer - employee relationship between the management & the workmen & workmen have worked for more than 240 days in the year 1996, 1997, 1998, 1999 & 2000?
2. Whether the workmen are entitled to reinstatement?
3. To what amount of backwages the workmen are entitled?
4. Relief if any?

ISSUE NO. 1.

It was submitted from the side of the workmen that they have been working as casual labours Since 1996, 1997 and 1998 with management No.1. They worked under the sole control of the management. Their work was satisfactory. They were not paid minimum wages. The termination of their services is illegal and arbitrary.

It was submitted from the side of the management that the workmen may have worked as ex-casual labours of the respondent. They were employed by M/s. Navnidh Carriers. The services of the workmen were terminated by the contractor. The contractor has not been made a party.

It was further submitted that the workmen had earlier filed OA No.2367 of 1999 in the CAT, New Delhi and the

the points and CAT rejected their claim as there was no employer-employee relationship.

It transpires from perusal of the documents that the workmen have been issued gate passes. The workmen Sh. Manohar, Sh. Dhanvir & Sh. Hans Raj have been issued gate passes from 1996 to 1997. All the workmen have been issued gate passes at least from the year 1998. Paper No. B-31 is a photocopy document. It has been marked as exhibit WW 1/1. This document indicates that the Caretaker has mentioned these workmen as casual labours.

Paper No. WW1/3 is also a photocopy. It contains seal of the Asstt. STN Director. Paper No. B-45 is also a photocopy document, it has been admitted by the management & the workmen have been shown as daily wages casual workers. The management has issued a certificate to Sh. Shahbaz that he was casual worker.

It was submitted from the side of the management that all these workmen are contractor's workmen. They have been engaged by M/s. Navnidh Carriers. Navnidh Carriers is not a contractor. From perusal of the documents of M/s. Navnidh Carriers it transpires that he has been given work order for supply of casual labours from 31-07-1998 and this work order has been extended to 31-01-2000. The gate passes issued to the workmen have been issued as visitors and not as workmen of M/s. Navnidh Carriers.

For engagement of contract labour, the management has to follow the procedure laid down in CLRA Act, 1970. It is admitted to the management that these workmen have worked in their organization as workers of M/s. Navnidh Carriers. M/s. Navnidh Carriers have not got themselves registered under CLRA Act, 1970 for supply of casual labours. They have no licence for supply of a particular workman, so there appears to be no substance in the argument that the workmen are contractor's men. There is no contract agreement. M/s. Navnidh Carriers has undertaken to supply workmen on work order basis from 31-07-1998 whereas the workmen Sh. Manohar and Sh. Dhanvir have been working from 1996 & 1997 as is evident from the gate passes. It appears that the workmen were engaged directly by the management but later on they were placed under M/s. Navnidh Carriers and the work order was given to M/s. Navnidh Carriers for supply of workmen. There is no provision for supply of workmen on the basis of work order. The work order under the circumstances is sham & ruse. The so called contractor is only name lender. There is no contract or agreement in fact.

It was further submitted that the case of these workmen have been decided in OA by order dated 01-07-2001. The CAT has not found employer-employee relationship between the management and the workmen.

The management is obviously an industry. The CAT has no jurisdiction to decide the case of industrial workmen. However, it becomes quite evident from perusal of the judgment of the CAT that none was present from the side

of the workmen. The order is ex- parte and ex- parte order does not have force of *res judicata*.

It also transpires from perusal of the documents that the management has given work order to M/s. Surabhi Transport Agency and thereafter M/s. Fleet Owner and Transport Carriers. The work is discharged on the basis of work order given to M/s. Surabhi Transport Agency and thereafter M/s. Fleet Owner & Transport Carriers. These Transport Carriers have no licence for supply of workers. They are transport agencies. In the circumstances the management has introduced their names to conceal the engagement of the workmen as daily wagers.

In case contract becomes sham and ruse there is employer-employee relationship between the management and the workmen. The workmen have been issued gate passes by the management directly. The workman Sh. Manohar has worked from 27-03-1996 till 01-02-2001. The workmen Sh. Dhanvir has worked from 06-11-1996 to 2001, Sh. Tej Pal has worked from 02-08-1998 to 2001 & Sh. Shahbaz has worked from 01-12-1998 to 02-01-2001. All these workmen have discharged more than 240 days work during the tenure of their engagement. They are direct casual daily wagers of the management and they are entitled to retrenchment compensation in view of section 25 F of the ID Act, 1947 and the documents of the aforesaid three carriers have been created to conceal the real fact of their engagement as casual labours. The management has issued letters treating them as casual labours. Thus, it is established by cogent documentary evidence as well as oral evidence that Sh. Manohar worked from 27-03-1996 till the date of his retrenchment, Sh. Dhanvir worked from 06-11-1996 till his retrenchment, Sh. Hans Raj worked from 1997 and Sh. Shahbaz & Tej Pal worked from 1998. All these workmen have worked continuously and they have completed 240 days in every year.

It has been held in 2005 IX AD (SC) 261 as under :

"Daily waged earners are not regular employees. They are not given letters of appointments. They are not given letters of termination. They are not given any written documents which they could produce as proof of receipt of wages. Their muster rolls are maintained in loose sheets. Even in cases, where registers are maintained by the Government departments, the officers/clerks making entries do not put their signatures. Even where signatures of clerks appear, the entries are not countersigned or certified by the appointing authorities."

In case of daily wagers, the management takes every effort to conceal the documents regarding the engagement. The workmen are constrained to file photocopies which they have obtained somehow or the other.

In the instant case the workmen have filed photocopies of gate passes which have not been denied by the management. These gate passes relate to 1996, 1997 and 1999. The workmen can at best file photocopies of

gate passes as the management takes gate passes while issuing the other gate passes. There is no explanation as to how the gate passes have been issued to these workmen in 1996 & 1997 whereas M/s Navnidh Carriers was given work order from 31-07-1998. Ex. WW1/24, Paper No. B-52 is a document of the management, it has been signed by Asstt. Station Director. The workmen have been shown as casual daily wagers. The workmen have been issued Identity Cards signed by Security Officer. These documents are no doubt photocopies but the originals cannot be said to be in the possession of the workmen and the management will always say that the originals are not available. The gate passes bear numbers & the photocopies have not been denied. These photocopies under the circumstances are admissible in evidence.

The workmen have been working as daily wagers prior to their engagement through M/s. Navnidh Carriers. The management has not been able to explain as to why gate passes have been issued to these workmen in 1996-1997 and prior to 31-07-1998. It appears that M/s. Navnidh Carriers was introduced to conceal the engagement of these daily wagers. Engagement of the workmen through Carriers is also illegal, so in the facts and circumstances of the case there is employer-employee relationship between the management and the workmen.

The management has engaged the other carriers just as M/s. Surabhi Transport Agency and thereafter M/s. Fleet Owner and Transport Carriers for supply of workmen on work order basis after removal of these workmen. The work is still going on. The work is of continuous and regular nature. In the circumstances it was necessary for the management to maintain muster roll register of daily wages employees. The workmen are the daily wagers of the management and they have performed more than 240 days work during the years of their engagement.

This issue is decided accordingly.

Issue No. 2.

It was submitted from the side of the management that even if the relation of employer and employee and 240 days work in each year is found established, the workmen may be given compensation in lieu of reinstatement. In case where workmen are retrenched without payment of retrenchment compensation and one month's pay in lieu of notice under section 25 F, valid retrenchment is not effected. In case there is no valid retrenchment the services are deemed continued and the only relief which can be given is re-storing the *status-quo ante*. The services are not terminated in the eye of law. It is deemed continued by fiction of law. The relief should be given to the workmen by putting them in previous status as there is no cessation of their services by illegal retrenchment.

It has been held in several cases that in case of illegal retrenchment, reinstatement is the natural consequence.

In 2000 L.L.R. 523 State of UP and Rajender Singh the Hon'ble Apex Court ordered for reinstatement with full back wages as the services of the daily wager cleaner who worked for 4 years were dispensed with without following the procedure for retrenchment.

It has been held in 1978 Lab IC 1668 that in case service of a workman is terminated illegally the normal rule is to reinstate him with full back wages.

It has been held in AIR 2002 SC 1313 that the daily wagers even if serving for a short period should be reinstated.

It was submitted from the side of the workman that in the instant case Section 25 F, G of the ID Act is attracted. In section 25 of the ID Act it has been provided that if a workman has performed 240 days work and if the work is of continuous and regular nature he should be given pay in lieu of notice and retrenchment compensation.

It has been held by the Hon'ble Apex Court that there is no cessation of service in case provisions of section 25 F are not complied. In the instant case no compensation has been paid to the workmen who have continuously worked for 4 years.

In the Constitution Bench Judgment in Uma Devi's case these matters were not at issue. In case a workman has worked for 4 years and the work is of continuous and regular nature should be paid retrenchment compensation. In case retrenchment compensation is not paid section 25 F of the ID Act is attracted. There is no cessation of his services. He is deemed continued in service in the eye of law. In case there is breach of section 25 F the service is continued and reinstatement follows as a natural consequence.

ID Act, 1947 has been enacted to safeguard the interest of the workmen belonging to poor segment of society. It appears that Legislature wanted that such workmen should not be harassed unnecessarily so section 25 F, U, T and Clause 10 of Vth Schedule have been enacted. The objects and reasons of ID Act, 1947 show that the respondent management should not be permitted to indulge in any unfair labour practice. The workman should not be engaged for years and then he should be removed all of a sudden. There is provision of retrenchment compensation for his removal. Retrenchment compensation is for compensating him otherwise so that he can survive long interregnum of unemployment. In the instant case no retrenchment compensation has been paid.

It was submitted from the side of the management that the Hon'ble Apex Court in 2006 (4) Scale has put down a complete ban on regularization and reinstatement. The Hon'ble Apex Court has held that employment can only be made on the basis of procedure established in that behalf envisaged by the Constitution. Equality of opportunity is the hallmark and the Constitution enshrines affirmative action to ensure that unequal are not treated equals. So

public employment should be in terms of constitutional scheme.

It was further submitted that the Constitution Bench Judgment has afforded a right according to which the Government is not precluded from making temporary appointments or engaging workers on daily wages.

The Hon'ble Apex Court has not declared the provision of ID Act un-constitutional. The Government has got no license to make always appointment of daily wagers and to continue them for life time. Fixed term tenure appointments and temporary appointments cannot be the rule of public employment. At the time of making temporary appointments Articles 14 & 16 are infringed. There is no constitutional mandate that the government is at liberty to go on giving fixed term appointments for the entire tenure of service of an employee.

No such Article of the Constitution has been pointed out under which the Government or Public Sector units can continue incessantly to give temporary and fixed term appointments again and again. Since fixed term appointments and temporary appointments are not governed by any constitutional scheme, such discrimination will amount to vicious discretion. The Government of Public Sector unit will go on resorting to the method of pick and choose policy and give temporary and adhoc appointments to their favorites and thus the principles of equality enshrined in the constitution will be given a go bye. Such is not the intent of the Hon'ble Apex Court. However, in this judgment the provision of the ID Act governing the services of the workman have not been declared un-constitutional. Reinstatement is the remedy provided in the ID Act for breach of several provisions enumerated therein or for breach of service rules provided in various labour welfare legislations.

Section 11 A of the ID Act stipulates that in case the Tribunal is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstance of the case may require. According to this benign provision this Tribunal has the authority to set aside the order of discharge or dismissal and reinstate the workman on the terms and conditions as it thinks fit.

A three Judges bench of the Hon'ble Apex Court has held in 1993 - II - LLJ that termination of services affects the livelihood of not only of the employee but also of the dependents. So in case of illegal termination of service the workman should be reinstated. Reinstatement should not be misconceived as regularization. By the order of reinstatement the status quo ante of the workman is restored. He is given back wages in order to compensate

him for his illegal dis-engagement. This is a special remedy provided in ID Act and it has not been annulled and set aside by any judgment of the Hon'ble Apex Court. The provisions of the ID Act are still constitutional and they are to be given effect too.

In case the workmen are reinstated with back wages, the respondents have every right, after payment of back wages and reinstatement, to retrench them validly following the principles of first come last go so that section 25, g & H of the ID Act are not violated.

In the instant case the workmen have worked for 3 to 5 years. The work is still continuing. The management has again taken the workmen from M/s. Surabhi Carriers & Fleet Carriers, so the work is existing. The management has illegally retrenched these workmen and has taken other daily wagers through work order. In the facts and circumstances of the case the workmen are entitled to reinstatement.

This issue is decided accordingly.

Issue No. 3

It was further submitted that payment of full back wages is not the natural consequence of the order of discharge or dismissal being set aside. It has been held in (2003) 6 SCC 141 that it is incumbent upon the labour court to decide the quantum of back wages.

It has been further held in (2003) 6 SCC 141 that payment of back wages having discretionary element involved it is to be dealt with the facts and circumstances of the case. No definite formula can be evolved.

It has been further held in this case that payment of back wages in its entirety, is the statutory sanction. In (2003) 4 SCC 27 the Hon'ble Apex Court held that in view of delay in raising the dispute and initiating the proceedings back wages need not be allowed. In the instant case there is no delay at least on the part of the workmen in raising the dispute.

In 2004 VIII AD SC 444 the Hon'ble Apex Court upheld the order of reinstatement with 25% back wages.

In 1978 Lab IC 1968 - three Judges Bench of the Hon'ble Apex Court held that payment of full back wages is the normal rule. In case services have been illegally terminated either by dismissal or discharge or retrenchment, in such circumstance the workman is entitled to full back wages except to the extent he was gainfully employed during the enforced idleness.

In 2005 IV AD SC 39-three Judges Bench of the Hon'ble Apex Court held that reinstatement with full back wages is justified. In this case the workman has performed more than 240 days work and he has been retrenched without payment of compensation and pay in lieu of notice.

The workmen have worked for 3 to 5 years as daily wagers. The work still exists. The workmen are manual

labourers. They must be doing some work off and on, so it cannot be said that they sat idle during this long gap. They are presumed to do some manual work for their subsistence. In the facts and circumstances of the case the workmen are entitled to 25% back wages.

This issue is decided accordingly.

ISSUE NO.4.

From the issue nos.1, 2 & 3 decided above it is established that the workmen are entitled to reinstatement w.e.f. the date of their termination along with 25% back wages.

The reference is replied thus:—

The action of the management of Prasar Bharti Broadcasting Corporation, Doordarshan Kendra, New Delhi in terminating the services of Shri Hans Raj S/o. Shri Banwari Lal, Ex-Casual Labour w.e.f. 1-2-2001, Sh. Md. Shahbaz Khan, Ex-Casual Labour w.e.f. 1-2-2001, Sh. Dhanvir, S/o. Sh. Kabool Singh, Ex-Casual Labour w.e.f. 1-2-2001, Sh. Manohar Paswan, S/o. Sh. Kabool Singh, Ex-Casual Labour w.e.f. 1-2-2001 & Sh. Tej Pal, S/o. Sh. Sohan Das, Ex-Casual Labour w.e.f. 1-2-2001, is neither legal nor justified. The management should reinstate all the above named workmen w.e.f. the date of their termination along with 25% back wages within two months from the date of the publication of the award.

The award is given accordingly.

Dated: 15-10-2007

R. N. RAI, Presiding Officer

नई दिल्ली, 5 नवम्बर, 2007

का.आ. 3293.—केन्द्रीय सरकार संतुष्ट हो, जाने पर कि लोक हित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (द) के उप-खण्ड (vi) के उपबंधों के अनुसरण में भारत सरकार के श्रम और रोजगार मंत्रालय की अधिसूचना सं. का. आ. 1571 दिनांक 14-5-2007 द्वारा किसी भी तेल क्षेत्र जो कि औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की प्रथम अनुसूची की प्रविष्टि 17 में शामिल है, को

उक्त अधिनियम के प्रयोजनों के लिए दिनांक 19-5-2007 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था;

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छः मास की ओर कालावधि के लिए बढ़ाया जाना अपेक्षित है;

अतः, अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (द) के उप-खण्ड (vi) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 19-11-2007 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[फा. सं. एस-11017/10/97-आई आर (पी.एल.)]

एस. कृष्णन, अपर सचिव

New Delhi, the 5th November, 2007

S.O. 3293.—Whereas the Central Government having been satisfied that the public interest so requires that in pursuance of the provisions of sub-clause (vi) of the clause (n) of Section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour S. O. No.1571 dated 14-05-2007 the service in the any Oil Field which is covered by item 17 of the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947) to be a Public Utility Service for the purpose of the said Act, for a period of six months from the 19th May 2007.

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months.

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares the said industry to be a Public Utility Service for the purposes of the said Act, for a period of six months from the 19th November, 2007.

[F.No. S-11017/10/97-IR (PL)]

S. KRISHNAN, Addl. Secy.